

# APPENDIX I

## Responses to U.S. Treasury RFI on Marketplace Lending

Original Request: July 20, 2015

Extension of Deadline: August 18, 2015

Deadline: September 30, 2015

Firm/Association	Notes
<b>Accion, US Network</b> <b>Gina Harman</b>	<ul style="list-style-type: none"> <li>▪ “Extremely difficult to assess the types of small business owners served by the marketplace.”</li> <li>▪ Many, if not most MPL platforms unable to target/reach businesses in low-to moderate-income and minority communities. MPL has not grown enough to fully close the lending gap.</li> <li>▪ Little oversight of small business loan brokers in terms of customer acquisition. Incentives to put borrowers into more expensive financing to receive a better kick-back.</li> <li>▪ MPL platforms that serve only small businesses and do not transact with customers are not subject to state and federal consumer law and regulations. Only a limited set of rules from the Consumer Financial Protection Bureau (CFPB) apply here. There is a need for greater regulation to prevent predatory practices in the online lending marketplace taking into account the lack of transparency on product features/costs, client acquisition, underwriting, and collection practices, for instance).</li> <li>▪ There is misalignment between lender and borrower interests.</li> <li>▪ Lenders and brokers should disclose APR and all other fees, provide key terms in plain English as well as a clear comparison of terms and loan options.</li> <li>▪ CFPB needs to promulgate data collection rules for small business lenders, and comparable protections to those given to consumers at the state and federal level to small business owners.</li> <li>▪ Referral partnerships with Biz2Credit and Intuit. Helped lead efforts behind the industry-led Small Business Borrower Bill of Rights.</li> </ul>
<b>Affirm</b> <b>Manuel Alvarez</b>	<ul style="list-style-type: none"> <li>▪ Already subject to significant amount of regulation, especially since the platform uses the bank-affiliated model.</li> <li>▪ There is a growing dependence on mobile technology, which means that borrowers will likely turn to MPLs with mobile-friendly tech.</li> <li>▪ MPLs subject to federal consumer financial protection laws yet “it is unclear as to whether the enforcement of these laws is always the same among the variety of federal regulators that enforce federal law.” There is a need for a level playing field by imposing a single federal regulatory agency that supervises and enforces federal law relating to MPLs.</li> <li>▪ As MPL expands, some lenders may choose to base operations outside the US making it difficult for consumers/regulators to hold the business accountable. Need to monitor where lenders develop and the effect on consumer protection.</li> </ul>
<b>Alliance Partners</b> <b>Brian Graham</b>	<ul style="list-style-type: none"> <li>▪ Potential competition between MPL and community banks, yet partnerships between the two likely to provide “substantial benefits” to customers and small businesses.</li> <li>▪ Lack of industry-wide data source makes it difficult to assess the impact of the sector, or by each individual firm. Need to capture data across the industry and platforms through a voluntary, industry-led data resource, not a government managed program.</li> <li>▪ Concerns regarding lack of disclosure rules and the lack of understanding small business credit terms, and institutional/retail pullback during times of economic distress.</li> <li>▪ On <i>Midland</i>, the bank originator approach is constructive as the model offers a standardized framework. Secondly, regulatory oversight of the partner bank is indirectly applied to a non-bank lender through a third-party vendor process.</li> <li>▪ Need to clarify “bank originator partner” framework to minimize uncertainty and consider segmenting MPLs to those that have/have not undergone rigorous third-party vendor management assessments in bank partnerships.</li> <li>▪ On risk retention, regulators need to consider different platforms and business models including the level of disclosures/transparency provided on loan characteristics and loan performance.</li> </ul>

<p><b>Amalgamated Bank</b> <i>Keith Mestrich</i></p>	<ul style="list-style-type: none"> <li>▪ Concerned with the lack of regulation in the small business space.</li> <li>▪ Specifically addresses Question 11 of Treasury’s RFI.</li> <li>▪ Many online lending market participants are unaffiliated with the Federal Deposit Insurance Corporation (FDIC) insured institutions. As a result, they are not subject to examinations regarding cybersecurity and consumer privacy protections.</li> <li>▪ Non-regulated institutions don’t have to worry about a borrower’s ability to repay when making loans since many of the loans were immediately sold to investors which reduces the incentive to consider a borrower’s ability to repay.</li> <li>▪ Unfair, deceptive, or abusive acts or practices (UDAAP) does not cover small business lending. In addition, the Truth in Lending Act (TILA) and the Fair Debt Collection Practices Act (FDCPA) cover only consumers as well.</li> <li>▪ There is a significant gap in the level of oversight of small business lending.</li> </ul>
<p><b>American Bankers Association / Consumer Bankers Association</b> <i>Robert Morgan</i> <i>David Pommerehn</i></p>	<ul style="list-style-type: none"> <li>▪ Need for a level playing field, and MPLs should be regulated by activity (rather than delivery channel).</li> <li>▪ Online MPLs "fundamentally resemble" traditional lending. The core products differ little from traditional loans.</li> <li>▪ Largest difference: ~5 percent upfront fee rolled into the consumer’s outstanding balance.</li> <li>▪ MPLs have "done little" to serve the unserved and underserved borrowers. "Credit decisions continue to rely primarily on credit scores, rather than alternative metrics."</li> <li>▪ Need to ensure MPLs are subject to bank consumer protections (TILA, Reg Z, ECOA, GLBA, FDCPA, etc.). Consumers should receive the same protections "whether they choose to borrow from a bank or a non-bank"</li> <li>▪ "Any activities that involve lending or securitization should be subject to the same regulation, whether offered by a bank or a nonbank. "</li> <li>▪ "Little to no oversight" in ensuring that federal regulations are being followed by non-banks.</li> <li>▪ Lending Club in its 10-K 2014: "We may not always have been, and may not always be, in compliance with all of these laws." Six pages of its annual report dedicated to potential regulatory risk.</li> <li>▪ Clarity needed on how current regulations will apply and benefit all parties in the lending process.</li> <li>▪ Origination fees alone are likely to slow as interest rates rise. Institutional investment is likely to move on resulting in a substantial increase in the cost of MPL loans.</li> </ul>
<p><b>Americans for Financial Reform</b> <i>Marcus Stanley</i></p>	<ul style="list-style-type: none"> <li>▪ Concur with comments from US Public Interest Research Group (PIRG), the National Consumer Law Center (NCLC), and the Woodstock Institute.</li> <li>▪ AFR responses limited to Questions 9 and 10 of Treasury’s RFI.</li> <li>▪ Balance sheet lenders do have skin in the game, yet don’t face minimum capital requirements applied to banks.</li> <li>▪ "Potentially serious prudential concerns exist with regard to online platforms which are funded through lender purchase of pass-through notes intermediated by the platform, lines of credit from external financial institutions, loan sales, or other arrangements in which the final investor may find it difficult to properly monitor underwriting."</li> <li>▪ Lenders and investors dependent on the P2P platforms for accurate information especially in regards to pass-through notes. Early stages of Prosper where default rates were 36 percent is an example of this problem.</li> <li>▪ Sector growing rapidly and there is a need for strong regulatory framework. The financial crisis of 2008 demonstrated that long chains of intermediaries who do not bear the risk of the final loan can lead to credit deterioration. Need to ensure this does not happen again.</li> <li>▪ Subject pass-through notes "and possible" whole loan sales to credit risk retention requirements as those required for asset-backed securities under the Dodd-Frank Act. Questions remain about how these rules will be applied to online lenders, and which entity is considered the "sponsor". Platforms as the sponsor "would provide the provider with significant incentives to ensure proper underwriting."</li> <li>▪ Regulators need to set standards for information reporting to investors regarding borrower characteristics, closely monitor bank lines of credit extended to peer-to-peer lenders, and to continue to monitor the growing sector.</li> </ul>

<p><b>Association for Enterprise Opportunity (AEO)</b> <i>Tammy Halevy</i></p>	<ul style="list-style-type: none"> <li>▪ Voice of microfinance business. The organization includes CDFIs, community lenders, nonprofits, etc.</li> <li>▪ Micro Capital Task Force released recommendations to improve capital access.</li> <li>▪ \$44-52 billion capital gap – a “massive market failure” that cannot be solved without innovative business models.</li> <li>▪ Since October 2015, AEO began to refer applicants from online marketplace lenders to CDFIs. Expect a scalable solution after one year that meets needs of micro businesses which CDFIs are best positioned to serve by leveraging the tech infrastructure of MPLs. Strengths in combining online MPL tech with CDFI participation.</li> <li>▪ MPLs should be evaluated “on the basis of the product platform, product features and credit model performance.”</li> <li>▪ Dodd-Frank Act included a mandate to collect and disclose data on small biz lending. While the rules have yet to be promulgated, this represents an opportunity for greater availability of information to spur better underwriting.</li> <li>▪ Risk retention: skin in game “must be linked to the business model of the MPL.” Transparency can mitigate this need.</li> </ul>
<p><b>Avant</b> <i>Ryan McLennan</i></p>	<ul style="list-style-type: none"> <li>▪ Online lenders are required to comply with applicable state/federal law and should not be held to a higher standard because they’re online lenders.</li> <li>▪ Online platforms provide consumers with the ability to compare credit opportunities.</li> <li>▪ Risk retention: best solved by the market. Avant retains loans on its balance sheet and sells to institutional investors.</li> <li>▪ “Demand from investors for loans originated through platforms which do not retain an interest in any loans should dictate whether credit risk retention is required.” A one-size fits all approach is “neither warranted nor beneficial”.</li> </ul>
<p><b>Todd H. Baker</b></p>	<ul style="list-style-type: none"> <li>▪ Wrote AB op-ed: Marketplace Lenders Are a Systemic Risk &amp; submitted it as comment letter.</li> <li>▪ MPL success for the long-term is within the regulated banking system.</li> <li>▪ Immediate action: Treasury should collect financial information from platforms as it is difficult to understand the implications of any Treasury ruling as most companies are private.</li> </ul>
<p><b>Banking Up</b> <i>Patrice Peyret</i></p>	<ul style="list-style-type: none"> <li>▪ Focus of comments on prepaid</li> <li>▪ “Policies and regulations should make sure that the opening and operation of such electronic accounts, including prepaid accounts, as a controlled or monitored disbursement mechanism for loans, is not prevented by the extension of existing regulations, in particular if such accounts were to be considered as credit or credit card accounts if they are merely used as a monitored or controlled loan spending mechanism.”</li> <li>▪ “Prepaid accounts used as a precursor to a loan, by analyzing prepaid card data for underwriting purposes, should not be considered as ‘prepaid cards with credit features’, as defined in the proposed rules published by the CFPB.”</li> <li>▪ “Prepaid issuing banks federally regulated by the OCC or the FDIC are currently lacking visibility and guidance as to which online marketing arrangement with marketplace lenders to accept or reject.”</li> </ul>
<p><b>Elia Bassin</b></p>	<ul style="list-style-type: none"> <li>▪ “I think state by state investor restricts should be decreased to the same requirement for people to invest into individual stocks. My Lending Club return has been better than a majority of individual stock purchases I have made and it should not be regulated as more risky than purchasing individual stocks. The only requirement could be to strongly encourage people to diversify, as is the recommendation for all investing.”</li> </ul>
<p><b>Blue Elephant Capital Management</b> <i>Brian Weinstein</i></p>	<ul style="list-style-type: none"> <li>▪ Non-bank lending is necessary in the age of the large bank</li> <li>▪ MPL promotes diversification of risks, though risk hasn’t been entirely removed. “There simply isn’t enough data to predict how these loans will perform, especially if they are made in high volumes for the first time.”</li> <li>▪ Finance and tech – a symbiotic relationship if done correctly.</li> <li>▪ Clarification needed over methodologies used to make loans and how much risk is inherent with each model.</li> <li>▪ Lack of industry standards. Merchant cash advance and payday lenders need to be regulated. For those doing a lot of volume, get in a room and knock out best practices.</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Standardization needed in the securitization space as each securitization in the form of a different language.</li> <li>▪ Regulatory questions remain. Rent-a-Charter approach make sense? Will there be skin in the game? Failure to address earlier vs. later will create greater disruption.</li> <li>▪ “To say that a platform lender has no ‘skin-in-the-game’ and is therefore reckless is unfair and inaccurate – if the lender fails to make good loans, they will cease to exist as a business, just like a balance sheet lender.”</li> <li>▪ “Forcing a platform to hold loans will not necessarily make them a better lender.”</li> <li>▪ Danger that platforms using questionable data or relying on data correlated to their style of lending (especially in the areas of subprime consumer, unsecured small business).</li> <li>▪ Regulatory distinction needed between platforms with significant data sets vs. those entering uncharted waters.</li> <li>▪ Less clear that technology can lower credit risk in areas where lending data does not exist.</li> <li>▪ Potential for significant growth in undeserved markets but it will take time. It will take a few business cycles before becoming “investible”.</li> <li>▪ Platforms operating in less developed spaces need to be scrutinized more than those platforms operating in more established markets.</li> <li>▪ “We see too many small business loans made based on consumer loan metrics.”</li> <li>▪ Would love to see regulatory clarity regarding <i>Madden v. Midland</i>.</li> <li>▪ Provisions in our agreements with MPLs for backup servicing for loans we make through the platforms.</li> <li>▪ MPLs should demonstrate a stress test scenario, which would force lenders into a discussion on how much data is truly available in their lending segment and where weak spots can be addressed. This would also remind investors that losses do happen.</li> <li>▪ Secondary market will be difficult to develop. Securitization will open the door for more liquidity yet this will be limited. Most MPLs don’t underwrite enough volume to support constant securitization. Derivatives is even further away from reality. With such a diverse investment base, there is little incentive to trade a derivative to hedge underlying basket of loans.</li> </ul>
<p><b>Bond Street</b> <i>David Haber</i></p>	<ul style="list-style-type: none"> <li>▪ APIs allow for ease of collecting information by online lenders. More data creates a stronger algorithm (also quicker to detect fraud)</li> <li>▪ Total addressable market size of underfunded small business loans estimated to be over \$300 billion annually, providing room for platforms to grow in unserved markets.</li> <li>▪ Have not adopted interest rate exportation, though the one advantage of a single regulatory framework applicable across the 50 states “would be to remove any incentive to export interest rates.”</li> <li>▪ Suggested ways to improve data collection and analysis: Automating 4506-T tax pulls from IRS, creation of a single data registry covering Secretary of State filings across the 50 states, and expand publicly available information on small businesses.</li> <li>▪ Restricting off-balance-sheet lending would stifle entrepreneurship. “As a young company, raising balance sheet capital would have been expensive and forced us to charge high rates to borrowers.”</li> <li>▪ Merchant cash advance and payday lenders are able to avoid representing the true costs of their products and this should be corrected. All lenders should publicly post the average APR they charge.</li> <li>▪ Urge policymakers to reinstitute issuance of Small Business Lending Company licenses to allow non-banks to make SBA 7(a) loans.</li> </ul>
<p><b>Thomas Brown</b> <i>Lecturer, UC Berkeley School of Law</i></p>	<ul style="list-style-type: none"> <li>▪ Existing regulatory framework works against the interests of consumers and society as a whole (different treatment between non-banks and banks).</li> <li>▪ “In short, the issues raised by the operation of such lending programs across state lines are the same ones that the lending industry has been grappling with for at least a century.”</li> <li>▪ The regulatory thicket around the U.S. financial services industry “is Byzantine.” Body of law and regulation is also “unstable.”</li> <li>▪ “Among other things, <i>Madden</i> illustrates that the regulatory burdens and benefits are not evenly distributed in the lending space.” Special privilege for banks vs. non-banks regarding state preemption.</li> <li>▪ “This RFI seems unlikely to start an effort to recast the regulatory framework for the delivery of financial services to consumers.... Banks have a vested interest in preserving the regulatory status quo.”</li> </ul>

	<ul style="list-style-type: none"> <li>▪ “There is no policy justification for giving banks and other chartered financial institutions a monopoly on the ability to export contract terms from one state to another.”</li> </ul>
<p><b>Buckley Sandler, LLP</b> <i>Joshua Kotin</i></p>	<ul style="list-style-type: none"> <li>▪ Submitted on behalf of a client.</li> <li>▪ Quick thoughts: existing laws and guidance already exist, consumer lending is different from business lending, and advanced technology allows platforms to get a more accurate underwriting picture.</li> <li>▪ “It should also be noted, though, that most of the participants in the ‘peer-to-peer’ and/or ‘marketplace’ lending spaces partner with an actual bank to serve as the Lender of Record – therefore, in almost all cases, it is the brand that serves as the Originator and Servicer of loans, but the bank actually funds the loan. As such, and as part of the bank regulations, there are in fact additional regulations passed through to us (marketplace lenders) via banking regulations....”</li> <li>▪ Regulation E is outdated based on today’s access and convenience of electronic access payments. Government should not dictate the requirement to support outdated, error-prone processes which hurt growth.</li> <li>▪ Focus needs to be on providers who warrant attention, such as those who mislead or take advantage of consumers, instead of targeting those who are truly innovating the space. “This could be done by addressing the secondary market and only being able to purchase paper from well-capitalized, “approved” originators.”</li> <li>▪ “The risk for new lenders in the space is that we are providing unsecured access to funds, and are lending against new rules in an economic environment that has been secure. Reliable models require different economic downturns and upsides to truly analyze performance and make good risk decisions.”</li> <li>▪ If government seeks to encourage platforms to take on risk before their models evolve, government needs to provide guidelines for personal loans (similar to FNMA/FHLMC), and provide a guarantee “to protect the interest of lenders who offer these loans.”</li> <li>▪ Regulators should offer best practices for underwriting standards, but avoid “overly rigorous regulations.” Guidance should focus on current laws vs. new regulation.</li> <li>▪ “A bank will not partner with organizations who cannot provide the necessary financial evidence of being able to repurchase loans based on this obligation or those that do not understand the compliance obligations of being a vendor.”</li> <li>▪ Consumer loans offered in this space are not payday-type loans with short terms and high rates. They are competitive with no collateral requirements. No consumers are losing their homes or other assets in the event of non-payment and there are no pre-payment penalties on such loans.</li> <li>▪ Reliance on trusted data sources for access to data “is much more reliable (and less susceptible to fraud) than physical documentation.”</li> <li>▪ “The CFPB’s Small Entity Compliance Guide and similar guidance already provides guidance for lenders in this space which should be adhered to. The CFPB can gather the guidance it has already issued and compile it into guidance specific to marketplace lending platforms.” This would provide the secondary market with a “checklist” to ensure platforms following the guidance. This approach would allow other industry players to “audit” their partners “to an extent that strengthens the company’s supporting and adhering to best practices.”</li> <li>▪ Flexible industry standards needed.</li> <li>▪ Complaint gathering should also be used to ensure platforms are meeting CFPB guidance. A complaint database is needed.</li> <li>▪ Risk retention – “absolutely not.” Investors have the ability to audit the platforms practices. Government agencies should “aggressively” hold platforms accountable to existing legislation and not continually look for roadblocks to control innovative organizations.”</li> <li>▪ Not necessary to distinguish between “risk” and “insurance”. There is no guarantee from the originator, a lender, or the investor that all loans will be repaid. Risk is priced into every deal.</li> <li>▪ MPLs offering same product issued by banks over the last 50 years. The only differences: convenience and accessibility.</li> <li>▪ Don’t penalize the good to send a message to the bad, who will continue to ignore such messages.</li> </ul>
<p><b>CAN Capital</b> <i>Parris Sanz</i></p>	<ul style="list-style-type: none"> <li>▪ Little value to regulating via market segmentation as the industry is constantly evolving and distinctions may lose value. It is premature to make distinctions.</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Consideration of the difference between small business and consumer loans is needed. Treating these the same from a regulation standpoint could adversely affect access to capital.</li> <li>▪ Policymakers should consider providing access to government data on prospective small business borrowers, with consent. Electronic access would allow for timely and more effective underwriting and servicing.</li> <li>▪ Encourage banks to leverage our risk models and user-friendly processes to attend to the needs of their small business customers. Partnerships also enhance and expand regulatory compliance and generate increased competition when compared to platforms that have to abide by state by state regulations.</li> </ul>
<b>Center for Financial Services Innovation (CFSI)</b> <i>Jeanne Hogarth</i>	<ul style="list-style-type: none"> <li>▪ CFSI’s Compass Guide to Small-Dollar Credit guidelines could apply to marketplace loans.</li> <li>▪ Small Business Borrowers’ Bill of Rights a “good first step” in outlining core principles.</li> <li>▪ Regulators need to be aware of structural differences between consumer and small business lending.</li> <li>▪ Improvements to security features and verification need to remain a focus.</li> <li>▪ Concerned about how non-credit bureau data used in underwriting.</li> <li>▪ Some MPLs reaching below prime and may continue to do so if liquidity conditions improve but at this point the industry “has not yet reached its full potential in serving underserved consumer segments.” MPLs could have more of an impact on small and micro businesses.</li> <li>▪ “Contrary to some thought, online marketplace lenders do not escape all regulatory scrutiny.”</li> <li>▪ In partnering with a bank, consumer loans need to be compliant with TILA, FCRA, FDCPA, and subject to MLA and BSA provisions, with many MPLs also subject to SEC regulations.</li> <li>▪ Secure access to government data bases would be “particularly helpful” to improve speed and quality of underwriting.</li> <li>▪ There is a need to monitor the potential for disparate impact through the use of data.</li> <li>▪ Policies that track non-fraud default rates among lenders may be helpful in monitoring consumer outcomes.</li> </ul>
<b>Center for Responsible Lending</b> <i>Rebecca Borne</i>	<ul style="list-style-type: none"> <li>▪ The “rent-a-bank” model “has been squarely rejected by federal and state regulators.”</li> <li>▪ Ability to repay needed to be considered in underwriting by MPL platforms.</li> <li>▪ Potential for conflicts of interest in the small business space if a broker steers the borrower to a loan that generates the largest yield spread premium. The Dodd-Frank Act prohibitions against brokers involved in the mortgage market should apply to brokered non-mortgage loans.</li> <li>▪ Bar mandatory arbitration clauses from consumer and small business loan contracts.</li> </ul>
<b>U.S. Chamber of Commerce Center for Capital Markets Competitiveness</b> <i>Jess Sharp</i>	<ul style="list-style-type: none"> <li>▪ Concerned that the department’s scope is too narrow “to create a realistic picture of the challenges and opportunities in this space.” Treasury needs to widen its view to pursue the larger goal of expanding small business access to credit.</li> <li>▪ Treasury should recognize the importance of online small business lending, but consider it a part of broader efforts to expand small business access to credit.</li> <li>▪ New regulatory regimes have imposed costs that have led to the current situation and pushed banks away from the lending scene. There is a need to address adverse regulatory impacts and allow the marketplace to evolve through innovative forms of financing.</li> <li>▪ MPLs can contribute to growth. For instance, OnDeck’s first \$1 billion in loans generated \$3.4 billion in economic activity and 22,000 jobs.</li> </ul>
<b>Joe Dengpan Chen</b>	<ul style="list-style-type: none"> <li>▪ Concern in how to assess underwriting and risk pricing conducted by the platform – “blind faith.”</li> <li>▪ Risk retention: a platform not putting its skin in the game exacerbates the trust issue.</li> <li>▪ Much less concern about being a borrower on the platform. I can go elsewhere if I don’t like the product.</li> </ul>
<b>Chicago Office of the Mayor</b> <i>Roxanne Nava</i>	<ul style="list-style-type: none"> <li>▪ Treasury should regulate lenders of small commercial loans, protect the borrowers of such loans including through meaningful disclosure.</li> <li>▪ Support comments from the Woodstock Institute.</li> </ul>
<b>Coalition for Responsible Business Finance (CRBF)</b> <i>Thomas Sullivan –</i>	<ul style="list-style-type: none"> <li>▪ Letter focuses on the question concerning what role fed govt. can play to facilitate lending innovation</li> <li>▪ Treasury should create an alternative finance and lending interagency group that meets quarterly.</li> <li>▪ “We suggest that twice a year the working group meet as a group comprised solely of governmental personnel, with officials from SEC, SBA, FTC, Federal Reserve, OCC, and other relevant agencies. And, we suggest that twice a year the working group meet with business leaders from across the alternative finance and business lending spectrum, including representatives from lead generators, aggregators,</li> </ul>

<b>Nelson Mullins Riley &amp; Scarborough LLP</b>	merchant cash advance professionals, peer-to-peer lenders, risk analytics services, direct lenders, marketplace lenders, and others.”
<b>CommonBond David Klein</b>	<ul style="list-style-type: none"> <li>▪ Simplified capital treatment rules for institutions willing to provide funding to marketplace lenders would be beneficial.</li> <li>▪ Suggest a Fed-like discount window for marketplace lenders.</li> </ul>
<b>Community Reinvestment Fund (CRF) USA Nick Elders</b>	<ul style="list-style-type: none"> <li>▪ Unproven nature of credit scoring models is untested in an era of rising interest rates or economic correction.</li> <li>▪ “We suggest policymakers take the steps necessary to level the playing field and ensure the rules governing small business lending be applied evenly for all small business lenders – online or otherwise.”</li> </ul>
<b>Conference of State Bank Supervisors (CSBS) &amp; National Association of Consumer Credit Administrators Daniel Bellovin</b>	<ul style="list-style-type: none"> <li>▪ Focus of the comments on financial regulatory framework questions.</li> <li>▪ State laws differ by MPL business model and whether products are consumer or commercial in nature.</li> <li>▪ Bank partnerships: “Prior case law related to short term/high-cost lenders is relevant because the underlying legal question is whether lenders can partner with a bank to bypass state licensure laws. When addressed in the context of short term/high-cost lenders, the details of the product – loan duration and interest rate – were inconsequential for determining the ‘true lender.’”</li> <li>▪ Ways to define true lender: 1) the party who closes the loan; 2) the party setting credit terms and disbursing funds; 3) the entity with predominant economic interest. Treasury will need to be aware of the “true lender” tests.</li> <li>▪ “Federal bank regulatory agencies – including FDIC Financial Institution Letter 44-2008 – provide guidance for managing third party risk.”</li> <li>▪ State laws mitigate risks of harm to borrowers, marketplace as a whole.</li> <li>▪ Cooperative efforts launched by states: Nationwide Multistate Licensing System and Registry (NMLS) provides a common electronic licensing system. Since 2012, states have been using this service for licensing non-depository financial services companies (money transmitters, check cashers, consumer finance lenders).</li> <li>▪ As of October 2015: 37 states use NMLS.</li> <li>▪ “State regulators support federal legislation to improve a key functionality of NMLS. H.R. 2643 and S. 1957 would allow state regulators to process criminal background checks on nonmortgage financial services professionals like marketplace lenders through the NMLS.”</li> <li>▪ MPLs dependent on loan origination which threatens the viability of their model, compared to community banks which rely on insured deposits (much more stable).</li> <li>▪ “A guide to small business funding that includes marketplace lending may be a useful product to educate small business owners on credit availability and contingency plans.” The SBA would be a good starting point.</li> <li>▪ State regulators are aware that some online lenders make loans to consumers “without regard to applicable state laws” that regulate/prohibit such activity. Violating the laws deprive consumers of added protections, including from usurious charges.</li> <li>▪ Support efforts to improve efficiency of existing licensing regimes at the state level and that promote consumer protection without undermining states’ ability to regulate entities that make loans to consumers outside a state’s borders.</li> <li>▪ Issues related to improper third-party collections are becoming more prevalent with online lenders.</li> </ul>
<b>Connect Lending Rick Burgess</b>	<ul style="list-style-type: none"> <li>▪ Recommend policymakers establish a peer-oversight group, similar to the US CFTC, specific for alternative commercial lending. Group would provide education, audit lenders, establish definitions, and create a set of common terminology lenders must use regarding fee and rate disclosures.</li> </ul>
<b>Credit Union National Association (CUNA) Luke Martone</b>	<ul style="list-style-type: none"> <li>▪ Important to regulate “the largely unregulated segment of financial service providers that offer services solely online.”</li> <li>▪ Crucial that Treasury also look at compliance burdens placed on credit unions by the NCUA, CFPB and others.</li> <li>▪ Question MPLs ability to serve credit to historically underserved segments of the population.</li> <li>▪ Disagree with suggestion that online marketplace lending is the only option to fulfill the credit needs of underserved consumers. Credit unions often attend to low-income, underserved populations.</li> </ul>

	<ul style="list-style-type: none"> <li>▪ 2,300 credit unions serving 23 million members specifically designated by the NCUA as “low income.”</li> <li>▪ Credit unions could be doing more. Need to "increase or eliminate the current cap on member business lending."</li> <li>▪ Ensure safeguards are in place to protect the hard-earned funds of consumers and small businesses.</li> <li>▪ A comprehensive study is needed on potential threats to MPLs (privacy, cybersecurity, consumer protection, etc.).</li> </ul>
<p><b>Cross River Bank</b> <b>Giles Gade</b></p> <p>Firms signed on: <i>Affirm, ApplePie Capital, Pave, Promise Financial, Upstart, Vouch, New Credit America, LendingUSA, Credit Services Corp.</i></p>	<ul style="list-style-type: none"> <li>▪ It is possible to segment marketplace lenders through regulatory, funding, or product segmentation.</li> <li>▪ The process of registering each loan from the PTP model as securities is cumbersome and disclosure provides “no meaningful transparency.”</li> <li>▪ Much of the new technology (big data) better filters potential borrowers to the specific MPL requirements.</li> <li>▪ MPLs are more effective at predicting credit outcomes than traditional scoring models thereby allowing MPLs greater lending ability and reach. “By considering additional attributes and factors, marketplace lenders can deliver prime-like outcomes to otherwise non-prime applicants based on the FICO methodology alone.”</li> <li>▪ However, “access has not expanded as greatly as we expect it to over the next few years.”</li> <li>▪ Partnerships with traditional banks or CDFIs, “limited” but likely to be on the rise, especially when mutually beneficial for a specific purpose such as CRA compliance.</li> <li>▪ Of critical importance – government support for the development of marketplace lending including support for a robust secondary market (including securitization) to finance marketplace loans. Government should promote standards for securitization of these assets in an effort to foster a liquid, secondary market for MPL loans.</li> <li>▪ “There are appropriate substitutions for risk retention, such as maintaining ongoing, non-economic (although some activities do generate income) interests in the loans, such as continued servicing by an originator, which serve to vest the originator throughout the life of the loan.</li> <li>▪ Consistent standards need to be applied across lenders of all types regarding fair lending, equal credit, debt collection, privacy regulations, etc.</li> <li>▪ “To date, there has been strong investor demand so MPLs... are reluctant to devote significant resources to help create a truly robust secondary market. The market has significant progress to make in this regard. If the market does, in fact, develop further, additional standardization and protocol will be necessary to create much needed transparency regarding the assets and the originators, as well as other participants.”</li> </ul>
<p><b>Crowdnetic</b> <b>Robert Reoch</b></p>	<ul style="list-style-type: none"> <li>▪ Aligning policy/regulation by borrower or product would be cumbersome due to platforms consolidating their offerings over time.</li> <li>▪ Data is lacking in the SME finance space and, to make things more difficult, is not standardized.</li> <li>▪ Treasury should review a UK proposal to introduce an “SME passport” as a way to speed up the lender approval processes.</li> <li>▪ There is potential for increased bank partnerships with MPLs to fulfill CRA requirements. “MPL has superior internet-based origination and hence is more likely to reach the homes and offices of those borrowers that fall within the intended scope of CRA lending.”</li> <li>▪ MPLs are also increasingly signing up with third-party servicers in the event of a platform failure.</li> <li>▪ Government should encourage more collaboration between banks and the MPL sector, including requiring banks to refer rejected applicants to MPLs, like what is currently being considered in the UK.</li> <li>▪ Anticipated changes: increased interest rates which will likely drive some institutional investors away from the MPL market; an increase in default rates for consumer/SME borrowers. “The overall impact on MPL ranges from no noticeable change, to a repricing of new loans to keep and attract capital, to a slow-down in MPL origination.”</li> <li>▪ Regarding risk retention, most MPLs have skin in the game including reputation risk and litigation risk if borrower fails. Some UK peer-to-peer lenders are also establishing a first-loss reserve.</li> <li>▪ The use of financial leverage by institutional investors is “evident but not prevalent”.</li> <li>▪ Little demand currently for a secondary market. That said, investor-driven securitization would benefit MPL sector “as it would introduce investors able to indirectly finance MPL originated debt instruments, thereby making more funds available in the pipeline for future direct investment.”</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Use of derivatives in this space could lead to potential systemic risk. However, if the derivative “has to reference a specified debt instrument and can only reference it once, then the notional value of derivatives outstanding could be contained.”</li> <li>▪ Use of benchmarks encouraged. “Fund managers would welcome the ability to invest in an SME index and banks would welcome the ability to use an SME index as a proxy portfolio hedge.”</li> </ul>
<p><b>Dealstruck, Inc.</b> <i>Candice Klein</i></p>	<ul style="list-style-type: none"> <li>▪ Does not consider itself a peer-to-peer lender as that is “akin to traditional brokering.” That business model dependent on origination. Dealstruck’s business model is affected by the performance of its loans, unlike peer-to-peer platforms. Provides the motivation to make prudent credit decisions.</li> <li>▪ Data should not replace human underwriting completely until such data has been proven over a significant period of time (credit cycles).</li> <li>▪ Dealstruck generally serves the mid-prime marketplace.</li> <li>▪ Little seen in terms of MPLs extending capital to unserved areas, though some models are expanding to reach the undeserved borrower.</li> <li>▪ “We encourage the Treasury to weigh stated use of proceeds and debt service coverage ratio heavily when considering factors important in extending credit for alternative online lenders.”</li> <li>▪ Need for real-time tax documentation access as well as streamlined underwriting by allowing e-signatures on the Form 8821.</li> <li>▪ The best way for banks to participate - offer financing to innovative lenders vs. changing process and underwriting procedures to facilitate smaller (riskier) loans. CRA incentives needed for banks providing capital through innovative lenders.</li> <li>▪ “Marketplace lenders rely upon third parties being willing to buy loans, and it is not yet clear how stable and how correlated the buyer base is across credit cycles.”</li> </ul>
<p><b>Distributed Finance Corporation</b> <i>Zachary Pessin</i></p>	<ul style="list-style-type: none"> <li>▪ Focus of remarks on the consumer.</li> <li>▪ Consumer asset platforms present the “greatest risk” and regulators should be concerned.</li> <li>▪ Relaxation of regulatory standards applied to consumer lending creates a double standard between banks and startups.</li> <li>▪ Alarmed at the fact that MPLs adjust “daily pull” from small and medium sized business (SMB) merchant accounts depending on the variability of daily cash flow. Meanwhile, banks that provide credit lines only require monthly payments. Regulators need to adjust these constraints as banks would be much more active in these addressable markets if so.</li> <li>▪ Banks still better assessors of credit risk, even though they are constrained by regulatory definitions. MPLs in the consumer lending space, however, “are not yet subject to the same set of rules, and we believe that if they were, especially the rules regarding fairness and equality, their coverage of underserved constituencies would recede to the same level covered by banks.”</li> <li>▪ In consumer lending, MPLs are “adding almost no value,” only increasing risk and distress. In commercial lending, MPLs “positioned well and capable of adding tremendous value.” That said, banks will catch up and either absorb the platforms or build their own.</li> <li>▪ There is no real distinction seen between SMB loans and consumer loans. They are “effectively the same.”</li> <li>▪ DFC is concerned about the possibility for systemic bias against minorities through the use of big data.</li> <li>▪ Limits on interest rates “need to be addressed at a federal level”. It makes “no sense that Americans living in homes next to each other could be subject to different rates that come from different states thousands of miles away.”</li> <li>▪ Decoupling has generated a massive amount of competition. Potential issues of unfair competitive behavior by banks as decoupling opens up revenue generating services to competitive forces they aren’t accustomed to dealing with it.</li> <li>▪ “It will be almost impossible in the current banking landscape to keep a large institution from levying undue administrative drag on a (non-bank) customer business where that customer is driving competitive action against the bank’s other offerings. So perhaps the basic account offerings (storing money and safeguarding it) warrant review as utility services”</li> <li>▪ There is a need for uniform application of regulatory treatment (including fairness and equality and stability and soundness).</li> </ul>

	<ul style="list-style-type: none"> <li>Regarding risk retention, platforms involved in price determination should retain risk (fits naturally with DF rules). Meanwhile, “those that are not involved in Price Determination should not have to retain risk.”</li> </ul>
<b>Duck Creek Tribal Financial</b> <i>Michelle Hazen</i>	<ul style="list-style-type: none"> <li>Economic arm of federally recognized tribe.</li> <li>Tribes are not subject to state regulatory law. The Tribal Financial Services Regulatory Authority “is the cornerstone of the Tribe’s Business to ensure responsible marketplace lending and consumer protection.”</li> <li>Electronic data is crucial and the business takes protecting information “very seriously.”</li> <li>The business contracts with a number of vendors who offer products and services to ensure our loans and services “are the best for our customers and the most compliant in the industry.”</li> <li>“Most importantly, if the federal government chooses to play a role in tribal online lending, it must engage in meaningful consultation with tribes. The Department of Treasury, along with other federal government agencies, has a trust responsibility to all tribes. Part of this trust responsibility is to encourage tribal self-determination through economic development.”</li> </ul>
<b>Earnest</b> <i>Benjamin Hutchinson</i>	<ul style="list-style-type: none"> <li>Need to closely monitor evolving industry models using existing regulatory tools as it is too early at this point to say which MPL models raise regulatory concerns as the models are rapidly shifting.</li> <li>Anecdotal evidence that underserved market segments are already benefitting from MPL product innovation.</li> <li>Concern that some entrants may rely on a partnership with an existing financial institution and not invest attention and resources to following state and federal legal and regulatory regimes. This leads to “sloppy practices.”</li> <li>Policymakers should use existing authorities to address online high interest rate or payday lending schemes that take advantage of consumers. “Bad actors put the reputation of the entire industry at risk.”</li> <li>Beyond payday lenders and other bad actors, “it is still premature to predict how this segment of the financial industry could present risks to consumers, investors, or the system as a whole.”</li> <li>Need to monitor the industry through a credit cycle to see how the models perform and conduct surveys to see how customers view their experiences.</li> <li>Industry driven regulation – some banks Earnest works with demand they have back-up loan servicers if Earnest unable to perform servicing functions.</li> <li>On the topic of risk retention, “it still remains unclear whether or not the existing Dodd Frank risk retention requirements are applicable to certain marketplace lending segments or products.” Prematurely applying those requirements to marketplace lenders could restrict innovation.</li> <li>Research is needed to see if any skin-in-the-game arrangements are emerging “voluntarily” in the MPL industry.</li> </ul>
<b>Electronic Transactions Association (ETA)</b> <i>Mary Albert</i>	<ul style="list-style-type: none"> <li>Unaware at the small business level of a model like P2P lending where consumer lending requires SEC registration of a security.</li> <li>There is a rich diversity of platforms. As such, it is “premature to box-in” a particular model/product structure through regulation or fit into regulatory frameworks designed 50+ years ago. Rather, continued monitoring is needed.</li> <li>MPLs expanding access to credit in the small business space, particularly to the undeserved market.</li> <li>Success of MPLs is dependent on credit risk models with high expectation of repayment, unlike models that are built on charging borrowers late fees and penalties.</li> <li>MPLs are already subject to a significant amount of regulation.</li> <li>Provision of data through web APIs would promote efficient and effective utilization of such data to improve lending.</li> <li>Policymakers should encourage non-bank participation in SBA loan guarantee programs and encourage traditional lenders to refer customers to MPLs if a customer’s application is declined;</li> <li>Risk retention: Trust, business reputation, product ease and transparency, underwriting credibility (prudent underwriting and strong loan performance) are factors that are “sufficient to align the interests of marketplace lenders and investors.”</li> <li>Regarding a liquid secondary market, “Most marketplace loans to small businesses are hold-to-maturity investments without a liquid secondary market for trading.”</li> </ul>
<b>eOriginal</b> <i>Jim Tebay</i>	<ul style="list-style-type: none"> <li>eOriginal is a digital transactional management service providing “financial institutions with the ability to verify secure, legally compliant and enforceable electronic asset documentation.”</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Incremental regulation should follow the alignment of risk. Risk holders should not only be compliant but also be able to conduct real-time monitoring and reporting “of key performance and risk indicators” available to potential buyers and regulators.</li> <li>▪ If the originate-to-distribute model is found invalid, there is a risk of enforceability and lower valuation.</li> <li>▪ “We believe there should be requirements for originators to have consistent protocols on the management of electronic financial assets, ensuring the uniqueness of each asset and that each investor can guarantee a complete chain of custody for the asset throughout its life cycle.”</li> </ul>
<p><b>Equifax</b> <i>Paul Zurawski</i></p>	<ul style="list-style-type: none"> <li>▪ MPLs and the evolution of how consumers and lenders interact, while innovative, should not divert lenders focus away from ensuring prudent underwriting standards (credit, capacity, collateral).</li> <li>▪ To ensure credit model accuracy, there is the need for periodic validation with recently booked loans. If model performance deteriorates, the model will be recalibrated or redeveloped using new data, customer attributes.</li> <li>▪ The responsible reporting of credit performance will bring greater transparency to the industry.</li> <li>▪ Encourage regulators to examine market practices to see if MPLs reporting hard inquiries (consumer has applied for credit) consistent with current practices in credit processing today when a consumer applies for traditional loan products.</li> </ul>
<p><b>Fundera</b> <i>Brayden McCarthy</i></p>	<ul style="list-style-type: none"> <li>▪ Transparency in the broker channels is needed, as brokers may steer borrowers to loans where brokers earn the highest fees, unknown to small business borrower.</li> <li>▪ “Regulators should require brokers to respect fiduciary responsibilities to borrowers, including duties of disclosure, prudence and care. It is only fair.”</li> <li>▪ Support self-policing efforts by the MPL industry including the Small Business Borrowers’ Bill of Rights, promulgating principles to act as a guide for regulators in overseeing borrower protection, encouraging the CFPB to implement Section 1071 to shame offenders, hosting summits on responsible business lending, as well as consolidating responsibility for enforcement with the CFPB.</li> <li>▪ The Dodd-Frank Act reigned in mortgage brokers, but failed to reign in other brokers who are not subject to federal oversight.</li> <li>▪ Policy concerns include high fees, inadequate fee disclosure, fees for failure and biased advice.</li> </ul>
<p><b>Funding Circle</b> <i>Conor French</i></p>	<ul style="list-style-type: none"> <li>▪ Unless otherwise noted, Funding Circle’s responses to the Treasury’s questions relate to its U.S. operations.</li> <li>▪ There is a common misconception that marketplace lending is largely unregulated. Funding Circle, in its letter, displays a whole list of regulations that they fall under.</li> <li>▪ Concerns raised about MPL lending are the same as or similar to concerns that have traditionally been raised for businesses engaging in similar activities.</li> <li>▪ Enhanced access to reliable and widely-available electronic small business data sources, including government-held data, could further aid the underwriting process.</li> <li>▪ Sourcing tax returns and other information from a publicly available digital database would speed up the underwriting process even further.</li> <li>▪ The creation of a central repository for small business data is needed, as well as a repository for known and suspected fraudulent activity.</li> <li>▪ Marketing of the firm's loan investment opportunities is primarily accomplished "through our website in reliance on the 'general solicitation' provisions of Rule 506(c) of Regulation D promulgated under the Securities Act... and/or through sales efforts of registered representatives of our broker-dealer in compliance with FINRA rules." Funding Circle takes “reasonable steps” to verify accredited status of each investor.</li> <li>▪ “Funding Circle would strongly consider limiting its evaluation of use of proceeds to business versus consumer purpose.”</li> <li>▪ “Less complicated and onerous investing regulations would counter the risks of increasing homogeneity among a large portion of marketplace lending capital providers. By placing significant limits on both the eligible and actual mix of investors for marketplace loans, these regulations consign many marketplace lenders to offer loan investments that are only suitable for institutional investors.”</li> <li>▪ Non-whole loan sale investments represent "the most significant regulatory hurdle" in regards "to democratizing the capital supply on most marketplace lending platforms." Debt obligation characterization</li> </ul>

	<p>as a security “deter many marketplace lenders from committing resources to developing secondary markets for any asset class other than whole loans.”</p> <ul style="list-style-type: none"> <li>▪ The JOBS Act, however, has not provided an effective means for smaller businesses to raise debt capital (i.e., through traditional debt markets, peer-to-peer models, or “debt crowdfunding”). <ul style="list-style-type: none"> <li>○ Limitation on funding portals from providing recommendations, onerous disclosure requirements for debt issuers, and strict limits on business models of debt crowdfunding portals.</li> <li>○ There’s a need to revisit the JOBS Act, or reconsider or clarify which securities regulation should apply practicably to non-whole loan sale investment in marketplace loans.</li> </ul> </li> <li>▪ Suggest the need for a referral program, like the one in the UK, as well as tax-based loan investment incentives.</li> <li>▪ Risk retention may impair the alignment of interest between MPLs and borrowers and investors, leading to higher financing charges and less communication to investors which will impede the growth of MPL lending.</li> <li>▪ That said, investors in asset-backed securities transactions associated with marketplace lending “should benefit from the risk retention requirements that securitization sponsors must comply with starting later this year.”</li> <li>▪ “For pure marketplace platforms, such as Funding Circle, that do not securitize the loans they originate, introducing risk retention into non-securitization loan investments is not necessary to protect investors.”</li> <li>▪ The Small Business Borrowers’ Bill of Rights provides six principles to protect small businesses from abusive practices, and establishes best practices.</li> <li>▪ If MPLs collect, store and share non-public personal and financial information from customers or potential customers, then they are bound by federal and state regulations including FCRA, GLBA, CA Financial Information Privacy Act (state legislation).</li> <li>▪ MPLs are also under commercial pressure from institutional debt and equity investors to develop robust safeguards, with conditions for financing often dependent on a platform’s information security practices and procedures.</li> </ul>
<p><b>Garante eMarket</b> <b>Bruno Ricardo</b> <b>Ferreira</b></p>	<ul style="list-style-type: none"> <li>▪ “Garante eMarket is a startup project that intends to create an automated and secure platform for registration and negotiation of financial collateral arrangements, specially loan guarantees and credit insurance guarantees for international commerce and e-invoicing. We work with cryptographic technology (and will develop a DEMO Dapp - decentralized application for smart contracts - on top of the ETHEREUM blockchain = the distributed ledger for smart contracts also known as bitcoin 2.0 ).”</li> </ul>
<p><b>GLI Finance</b> <b>Louise Beaumont</b></p>	<ul style="list-style-type: none"> <li>▪ Leading investor in alternative finance providers of credit to SMEs.</li> <li>▪ Discusses the UK efforts to promote alternative finance.</li> <li>▪ Would welcome a “light tough” regulatory regime that takes into account the different platforms and products.</li> <li>▪ Suggest policymakers/regulators consider UK legislation regarding referrals of declined applications from traditional financial institutions to MPLs.</li> <li>▪ Support efforts to require registration/licensing at the federal level.</li> <li>▪ Risk retention: “Firstly, any reputational impact from a bad loan or loss of funding impacts their reputation in the marketplace and their ability to attract further funds. Some of our platforms are balance sheet lenders, or invest their own funding through the platforms as a condition of attracting institutional investment, so are directly involved in the investments made. We believe both of these are a sensible check and method of accountability to ensure that platforms remain engaged in the performance of investments.”</li> <li>▪ The use of leverage is “quite prevalent for institutional investors that are predominately funded through equity, regardless if that equity is listed or private.”</li> </ul>
<p><b>Global Debt Registry</b> <b>Mark Parsells</b></p>	<ul style="list-style-type: none"> <li>▪ Credit underwriting models have yet to experience a downward economic cycle</li> <li>▪ MPLs need to ensure account information remains updated and intact</li> <li>▪ Suggest the creation of an independent centralized registry to be used for tracking lending transactions and for the storage of account level data and other documents associated with MPL loans. The Uniform Law Commission, for instance, is considering a similar solution with regards to transfer of consumer debt.</li> </ul>

	<p>Such a framework would lead to more transparency and coherency in understanding how deals are structured.</p> <ul style="list-style-type: none"> <li>▪ “The federal government could facilitate both innovation and stability in the online marketplace for lending by mandating or incentivizing the use of an independent centralized registry for tracking lending transactions and storing the account-level data and documents associated with such loans. The Uniform Law Commission is currently considering a similar solution with regard to the transfer of consumer debt, particularly credit card debt. A similar framework for marketplace lending would help protect investors and borrowers by ensuring transparency and coherency regardless of how deals are structured.”</li> <li>▪ Regarding risk retention, full transparency is needed. “The ability to confirm the underlying personally identifiable information for a loan is best served by an independent entity other than the originator or the investor.”</li> </ul>
<p><b>Godolphin Capital Management</b> <i>Gyan Sinha</i></p>	<ul style="list-style-type: none"> <li>▪ Investment manager with a primary focus on the online marketplace lending sector.</li> <li>▪ Policymakers should rely on a “principles-based” approach to regulation given the different roles of platforms.</li> <li>▪ MPLs should be subject to a level playing field with traditional establishments as far as origination is concerned.</li> <li>▪ The core philosophy underlying the credit underwriting process hasn’t really changed between new online platforms and traditional lenders, though tech allows platforms to continually update their credit models in real-time.</li> <li>▪ “The pre-emption of state laws is an issue that should be dealt with through a licensing regime that respects the rules and regulations in all regions in which platforms operate - this will serve to reduce the regulatory uncertainty around this type of lending and improve confidence in the capital markets.”</li> <li>▪ Government-level data should be made available to MPLs, especially data on small businesses.</li> <li>▪ Investors purchasing assets from MPLs “should be the ones providing risk-retention in the event they wish to securitize these loans” to align interests with senior debt buyers. Otherwise, there should be no requirement for risk retention as the parties should be able to rely on contract law instead.</li> <li>▪ The existing body of regulations is currently adequate to ensure adequate protection of lender information.</li> <li>▪ Secondary liquidity is “poor”. An active market would allow more accurate mark-to-market of loan portfolios, as well as price discovery.</li> <li>▪ “Derivatives markets in this sector are an unnecessary distraction at this juncture and must wait until sufficient liquidity in the underlying is created.”</li> </ul>
<p><b>Habematolel Pomo of Upper Lake (HPUL)</b> <i>Sherry Treppa</i></p>	<ul style="list-style-type: none"> <li>▪ Online lending business operated by a federally recognized tribe. Revenues make up nearly 100 percent of the tribe’s budget.</li> <li>▪ Executive Order 13175 - Treasury has a duty to respectfully consult with tribal governments regarding any regulatory actions that may significantly affect tribes.</li> <li>▪ Balance sheet lender, and not subject to state laws.</li> <li>▪ The federal government must respect and acknowledge the regulatory role tribes play (Dodd-Frank rules). Potential infringement on sovereignty, otherwise.</li> <li>▪ Abide by tribal ordinances governing handling of private consumer information. Also compliant with GLBA.</li> <li>▪ Maintaining bank relationships is extremely difficult due to Operation Choke Point.</li> <li>▪ The federal government should encourage tribes to invest in the industry.</li> <li>▪ The CFPB small loan rules have the potential to curtail lending and operations of online MPLs.</li> <li>▪ Risk retention: already have skin in the game due to being a balance sheet lender.</li> <li>▪ Secondary market: none exists. Tribe retains the default risk of its loans.</li> </ul>
<p><b>Heritage Foundation</b> <i>David Burton</i></p>	<ul style="list-style-type: none"> <li>▪ Treasury and other regulators should “Do no harm” and cut back on regulation. “The RFI clearly shows that Treasury is contemplating doing harm.”</li> <li>▪ Irrational treatment: “Under the current regulatory regime and SEC practice, loans to small businesses by banks, credit unions, finance companies or individuals not using a P2P lending platform are almost always treated as exempt from registration requirements. Loans via peer to peer lending platforms are not.”</li> </ul>

	<ul style="list-style-type: none"> <li>▪ SEC’s actions in 2008 against Prosper and Lending Club are a “blatant example of the SEC creating a regulatory barrier to entry and protecting incumbent firms (i.e. banks) from competition from a disruptive new entrant.”</li> <li>▪ Regulatory burden has caused EU companies in MPL business to exit the U.S. market with none having entered it “so far as I know” even though P2P lending is thriving in the EU.</li> <li>▪ Three ways to reduce regulation: 1) law should exempt P2P from fed/state securities laws. The Dodd-Frank Act’s consumer loan exemption should also include loans to small biz. “Blue sky laws should also be preempted with respect to P2P lending”; 2) amend Title III of the JOBS Act to include a category of crowdfunding called “crowdfunding debt security” or “peer-to-peer debt security” where an issuer offering securities pursuant to the crowdfunding exemption would be exempt from the continuing disclosure requirements. Such disclosure is “entirely inappropriate” for debt securities. The debt security should be “self-effectuating and not rely on the SEC to issue rules to become effective”; 3) an alternative regulatory regime for P2P lending. “It would require some regulatory agency (usually the CFPB is suggested) to promulgate rules, create a division to regulate peer-to-peer lending and undoubtedly bureaucratize the entire field.” Though, this is “the least attractive approach.”</li> <li>▪ No need for risk retention. “The platforms are a means of intermediation. They match lenders and borrowers efficiently and allow lenders to easily diversify credit risk even when lending small amounts. They do not lend.”</li> </ul>
<p><b>Income&amp; Technologies, Inc.</b> <i>Brad Walker</i></p>	<ul style="list-style-type: none"> <li>▪ The firms is a MPL platform focused on high credit quality 1-4 family residential mortgages that don’t meet the qualified mortgage (QM) definition.</li> <li>▪ For most lenders there is no alternative but to keep non-QM mortgages on the books requiring significant capital commitment. Interest rates, as result, are much higher than QM and there is less capital available for non-QM. A secondary market allows investors to invest in payment streams of non-QM mortgages.</li> <li>▪ Does not plan to use the P2P lending model and will not originate loans. Instead, the platform offers investment in PRIMOs – representing a fractional participation in a particular mortgage. PRIMO is not a securitization and is only offered to accredited investors.</li> <li>▪ Non-QM market is a good example of underserved market.</li> <li>▪ The platform intends to publish set of standards mortgages must meet to be eligible for sale on its platform. “It anticipates that these standards will meet or exceed the minimum creditworthiness standards for agency eligibility.”</li> <li>▪ Risk-retention is complex and burdensome. The Dodd-Frank Act requirements apply to securitization, yet Income&amp; model “simply is not a type of securitization.” Treasury “should not second-guess that choice and seek to apply it in the different context of marketplace lending.”</li> <li>▪ A principles-based approach needed to “require originator accountability, but allow different approaches to providing that accountability.”</li> <li>▪ “The secondary market liquidity options for marketplace loans appear inadequate: they are inefficient and do not guarantee liquidity.”</li> <li>▪ Emergence of derivatives and benchmarks would make MPL more accessible and foster more efficient pricing.</li> <li>▪ Don’t need prescriptive regulation like banks as don’t receive government subsidies in form of FDIC insurance, Federal Reserve funding.</li> <li>▪ There is no need for new regulation at this time, “nor would any such regulation (including risk retention) pass the cost-benefit tests required by OMB and the courts.”</li> </ul>
<p><b>Independent Community Bankers Association</b> <i>James Kendrick</i></p>	<ul style="list-style-type: none"> <li>▪ “Very concerned” about the rapid growth of the marketplace lending industry.</li> <li>▪ Targeted at the most vulnerable with “little regard for quality underwriting and prudent risk assessment.”</li> <li>▪ Investors attracted to high yield return with little regard to consumer’s being able to make payments associated with the loan.</li> <li>▪ Need to assess the effect on marketplace lenders from economic contraction, and how this impacts elsewhere.</li> <li>▪ MPLs should be held to same regulations as community banks (Truth in Lending Act, Equal Credit Opportunity Act, Fair Credit Reporting Act, Fair Debt Collection Practices Act, fair lending laws, etc.)</li> </ul>

	<ul style="list-style-type: none"> <li>▪ If platforms are securitizing loans by issuing asset-backed securities, they should be subject to risk retention requirements under the Dodd-Frank Act, with retention not less than five percent of the credit risk of the securitized asset.”</li> <li>▪ Treasury should work with ICBA to address regulatory burdens its members are subjected to that impairs their ability to lend.</li> </ul>
<p><b>Insikt</b> <i>James Gutierrez</i></p>	<ul style="list-style-type: none"> <li>▪ Pioneer of Lending-as-a-Service through Lendify platform which powers brands to offer loans through it. The firm is also an institutional buyer on Lending Club and Prosper platforms.</li> <li>▪ Risk retention: platform has skin-in-the-game (transparency, high quality underwriting &amp; servicing)</li> <li>▪ Particular expertise in the non-prime segment. Applying for CDFI certification to achieve its mission.</li> <li>▪ Retains the equity tranche of any securitization (the first-loss) – a true alignment of interests.</li> <li>▪ New rulemaking could put installment loans at disadvantage vs. credit cards, since CC companies under Reg Z don’t have to include mandatory fees in their APR calculations, whereas close-ended installment loan originators do. Can’t make apples-to-apples price comparisons between installment loans and CC offers. Also have to deal with more stringent ATR requirements. Need to hold CC to the same ATR/APR disclosure standards as “covered long term” loans.</li> <li>▪ The <i>Madden v. Midland</i> case creates uncertainty in the secondary markets. There’s an expectation that consumers in those states will lose access to credit as a result. Legislation is required to address the uncertainty stemming from the <i>Madden</i> decision.</li> <li>▪ Warehouse funding (no add’l regulation needed); whole loans (prudent for reps and warranties to match standards implemented in other consumer/commercial loan asset classes); BDP notes (no add’l regulation); securitization (add’l transparency needed. Data and risk analytics tools are needed for investors to assess performance).</li> <li>▪ Imperative that all platforms open their data “broadly and freely” to all investors and participants at all times.</li> <li>▪ Government needs to share more data to foster greater innovation and better underwriting.</li> <li>▪ Treasury also needs to create incentives for banks to partner with MPLs.</li> </ul>
<p><b>Intuit</b> <i>Bernie McKay</i></p>	<ul style="list-style-type: none"> <li>▪ QuickBooks Financing</li> <li>▪ Intuit is not a lender and does not set underwriting standards for the participating lenders on the QuickBooks Financing platform. It’s a matchmaker, not a lender.</li> <li>▪ Focus on lending practices themselves vs. MPL models and on the need to develop principles based regulation to reduce complexity.</li> <li>▪ Pro-consumer, uniform national standards needed so business owners across the US become familiar with disclosures regardless of location.</li> <li>▪ Currently seeing risks with data security and privacy. There is a need for robust security practices and the use of customer data must be transparent and clear. Privacy and security standards should be similar to the standards traditional financial institutions have to comply with.</li> <li>▪ Partnering with KivaZip for instance and other microfinance institutions to reach underserved markets.</li> <li>▪ Recommend a review of the patchwork of state laws, some of which “do not account for innovation or technology changes in the lending space, the use of data-based processes, and the online marketing place (i.e. services across state lines).”</li> <li>▪ Access to government held data would further add to completeness of small business lending and better improve underwriting.</li> <li>▪ Traditional financial regulations on loan brokers, in particular, need to be updated. Current regulations may not be relevant to online business models that use data-based processes to evaluate potential borrowers and that offer services across state lines. The patchwork of state rules are burdensome.</li> <li>▪ Federal and state lending laws must be looked at to ensure the changing marketplace is addressed. “This includes not only expanding the lending requirements from simply consumer mortgages to all consumer loans and small business financing – but also, clarifying the regulatory and licensing regime for marketplace lenders, facilitating the adoption of uniform laws and licensing requirements. Expand lending requirements for simply consumer mortgages to all consumer loans and small business financing. Clarification is also needed regarding the regulatory and licensing regime for marketplace lenders.”</li> </ul>
<p><b>Kabbage</b></p>	<ul style="list-style-type: none"> <li>▪ Difficult to segment lenders.</li> </ul>

<p><b>Azba Habib</b></p>	<ul style="list-style-type: none"> <li>▪ Marketplace lenders without any capital risk “put themselves in a position of mismatched incentives - slightly lower stated risk can greatly increase the perceived return to the investors, and can also create long-term challenges if these assets do not perform in the manner promoted.”</li> <li>▪ Importance of data to provide a more comprehensive view of the customer, develop a more flexible product, and “in determining the amount of a loan that can be affordably repaid.”</li> <li>▪ Small business lending models vary according to cost and methods of customer acquisition, the cost of bad debt, the cost of capital, and business operations</li> <li>▪ “There is surprisingly little automation in online consumer lending, and even the largest online marketplace consumer lenders manually underwrite most of their loans, so the scale of that cost does not decrease as the portfolios grow.”</li> <li>▪ “It is incredibly difficult for any lender to offer meaningful credit to a thin or no-file borrower, as the lack of relevant data makes it impossible to gauge risk.” As such, need for the use of non-traditional data, such as social data, to score these types of borrowers (Lenddo, for instance).</li> <li>▪ Non-bank lending “has absolutely expanded access to historically underserved segments.” Particularly to SMBs who want to borrow less than \$200,000 and who are often overlooked by banks.</li> <li>▪ “A better relationship is one in which the financial institution utilizes the non-bank lender’s technology to facilitate loans to the end customers under the bank’s own brand.”</li> <li>▪ The platform continually tests and reshapes its underwriting model.</li> <li>▪ Changes needed to the FCRA to allow platforms access to greater amounts of data on small businesses.</li> <li>▪ The federal government could help MPLs by helping to ID new customers, providing incentives for new lenders, encourage FIs to work with MPLs, and accessing more data.</li> </ul>
<p><b>Kiva Microfunds</b></p>	<ul style="list-style-type: none"> <li>▪ Focus of comments on Kiva Direct (direct lending program).</li> <li>▪ Difference: some platforms driven by profit, others are socially motivated.</li> <li>▪ Yet to observe “significant lender confusion” regarding risks to lending and/or rate of return.</li> <li>▪ 0% interest rate means borrowers can’t owe more than the principle amount lent to them.</li> <li>▪ “Companies like Kiva, whose very models prevent them from profiting off of borrowers, should not be required to meet the same regulatory standards as for-profit companies.”</li> <li>▪ “If anything, regulations should help to facilitate and legitimize the socially driven online marketplace lending space.”</li> <li>▪ Disbursements and repayments move through PayPal.</li> <li>▪ Beyond digital data sources, Kiva also conducts manual reviews of the applicant including speaking directly with applicant through the use of local volunteers. “Nearly half of all Kiva borrowers have met in person with these volunteers before raising funds through Kiva....”</li> <li>▪ Social underwriting: loans that the crowd did not choose to fully fund had higher default rates vs. those entirely funded by the crowd.</li> <li>▪ Kiva’s U.S. loan default rate is in-line with the default rates of traditional microfinance lenders.</li> <li>▪ “The unsecured nature of the loans together with the guaranteed negative return on investment act as a filter such that only socially minded investors lend through Kiva.”</li> <li>▪ Kiva is expanding credit access to the underserved. Minority entrepreneurs “highly over-represented” among Kiva’s borrowers. Women entrepreneurs make up +50% of Kiva’s loans.</li> <li>▪ Partnership with traditional incumbents: “In the future, Kiva envisions partnering with traditional financial institutions in a mutually beneficial arrangements whereby bank funds could flow through Kiva to support more underserved borrowers, and banks could count their support of Kiva borrowers toward Community Reinvestment Act requirements.”</li> <li>▪ Law/regulation different from state to state, costs associated if regulated by all 50 states “puts additional practical restrictions on Kiva’s ability to expand its business model to reach more borrowers.”</li> <li>▪ Consumer lending laws across the U.S. states a “myriad of regulatory requirements.” This restricts Kiva direct lending platform to only fund business loans “despite the need for small, low-cost consumer loans... in undeserved markets.”</li> <li>▪ “If regulatory changes were to require Kiva to register as a formal lending institution or a securities broker-dealer at a federal level or across the fifty states, the costs would make it very difficult for Kiva to operate under its current model.... Conversely, a unified regulatory system to simplify compliance across the states</li> </ul>

	<p>could allow Kiva to expand its model and reach more borrowers, especially if the system applied appropriately lighter, risk-based standards to low or no-interest, unsecured lenders.”</p> <ul style="list-style-type: none"> <li>▪ Crowdfunded loans limit an individual lenders exposure and lenders are more tolerant of defaults “since they lend with social intent rather than the desire for profit.”</li> <li>▪ “The panoply of federal and state regulations governing broad categories of consumer loans can also be a significant challenge to socially minded marketplace lenders.”</li> <li>▪ Risk retention: “Kiva simply would not be able to afford to lend its own funds” as they’re used for operating purposes solely. “Requiring Kiva to lend its own funds would be counterproductive...”</li> <li>▪ “Any law requiring marketplace lenders to have skin in the game should provide an exemption for models like Kiva’s.”</li> <li>▪ Identified risks: lenders leave negative comments on a borrower’s page, in addition to in-person harassment.</li> <li>▪ Secondary market: Kiva loans are not transferable.</li> </ul>
<p><b>KPMG</b> <i>Fiona Grandi</i></p>	<ul style="list-style-type: none"> <li>▪ “Securitization regulations for traditional financial services institutions can be levered for specific guidance for marketplace lenders.”</li> <li>▪ Education and protocols surrounding data governance, quality, and availability are needed.</li> <li>▪ Not clear whether MPL platforms are “making appreciable inroads into getting much needed capital into undeserved markets.”</li> <li>▪ No tangible evidence to suggest that the subprime model has been “sufficiently tested” by scale, as much of the activity to date has revolved around card or student loan refinancing.</li> <li>▪ Time will tell if innovations can survive a credit cycle. Bulk of the business however is not about serving underserved at this point, but credit worthy borrowers.</li> <li>▪ Too early to say whether MPLs offer a better credit model or just the ability to execute faster on cheaper margin.</li> <li>▪ Rather than skin in the game, “having a fundamentally sound means to review and attest to data quality” by an independent third-party is paramount to addressing this issue.</li> <li>▪ Imposition of broad regulation on the industry at this point in time could stifle growth. Focus needs to be on industry transparency regarding accountability and controls.</li> </ul>
<p><b>D L</b></p>	<ul style="list-style-type: none"> <li>▪ Community banker concerned with the shift from conversing with experts to the use of the internet.</li> <li>▪ “My question to those who attempt to go this route, mainly to those seeking home financing or small business financing, is why they would look to a website for advice for what may be the biggest financial decision of their lives? I firmly believe that dealing with a local professional will provide advice that a computer generated algorithm can not, or a potentially commissions person on the other end of the phone can not as they have no long-term vested interest in your situation.”</li> </ul>
<p><b>LDF Business Development Corp.</b> <i>Brent McFarland</i></p>	<ul style="list-style-type: none"> <li>▪ A “wholly-owned and operated economic arm and instrumentality of the Lac du Flambeau Band of Lake Superior Chippewa Indians.”</li> <li>▪ BDC invested in a number of online lending businesses.</li> <li>▪ BDC through online lending has economic impact on the Indian tribe.</li> <li>▪ The federal government must acknowledge its tribal regulation and authority, and respect it.</li> </ul>
<p><b>Lending Club</b> <i>Renaud Laplanche</i></p>	<ul style="list-style-type: none"> <li>▪ Partnership with issuing banks brings “tremendous value.”</li> <li>▪ “Our borrowers benefit from the same regulatory protection as any bank customer as all loans issued through our platform are issued by federally regulated banks.”</li> <li>▪ Difference between credit marketplace (who do not take balance sheet risks) and balance sheet lenders. “We believe that companies that use their balance sheets to make loans are not marketplace lenders, and may be better described simply as balance sheet lenders.”</li> <li>▪ Existing regulations “adequately protect” consumers, yet concerns that transparency is lacking in the small business space. Provides an opportunity for the industry to coalesce around Small Business Borrowers’ Bill of Rights.</li> <li>▪ Risk retention: LC has “tremendous” skin in the game (“starting with over 20% of our revenue from each loan being subject to loan performance over time”) and ongoing alignment of interests with investors. Mandated capital-based risk retention requirement would be “misguided”. Propose additional mandatory disclosure requirements to ensure investors have all the needed information.</li> </ul>

- Tax incentives: Suggest that investors who provide capital to underserved areas, and low-to-moderate income small biz borrowers should be taxed at the capital gains rate not at the current marginal income tax rate. Second, investors should be able to offset losses against interest income and gains, and returns on the first \$5,000 of investments be tax free. Also suggest looking into UK P2P ISAs.
- The IRS needs to create an API for tax return transcript process (IRS 4506t) to allow for more efficient income verification.
- Robust and highly efficient compliance management and consumer protections: two-sided marketplace with wide variety of investors each providing own level of due diligence and oversight; public offering of securities brings additional controls along with disclosures of loan-level data on website; partner with federally regulated issuing bank to directly oversee/audit loan program (in addition to regulators)
- Provision of credit to low, underserved individuals, companies: "\$200 million in loans to low- and moderate-income individuals across the United States;" provision of capital to micro-businesses (revenue <\$250,000). Partnerships help to drive reached to underserved areas of market.
- MPL-bank partnership model provides efficient lending system and enhances a bank's product offerings to borrowers.
- Developed and refined its credit and statistical models since inception leading to greater credit performance, and effective fraud prevention.
- Lending Club is subject to 3 quarterly audits, one annual audit from primary issuing bank. "The platform is also subject to an annual audit for the issuing bank from an independent third party in line with good vendor management policy. In addition to the bank's testing, Lending Club is also subject to review by the bank's prudential regulator (the FDIC and the Utah Department of Financial Institutions) on a periodic basis as the regulator assesses the oversight and controls exhibited by the bank over the program." Also undergoes multitudes of testing, auditing, diligence from other financial institutions and investment partners. The Board of Directors Risk Committee meets 4 times a year.
- "We believe Madden was wrongly decided, as it applied the wrong preemption standard and failed to recognize the established "valid when made doctrine." We also believe that the facts of Madden (the collection of a charged off debt) are far different from most marketplace lending programs, such that the conclusion in Madden would not apply. Finally, we believe that state law separately recognizes the "valid when made doctrine," even if not recognized (per Madden) as a matter of federal law. We also believe that the strong choice of law establishment in marketplace lending further supports our position."
- In response to *Madden*: further clarifying choice of law elements of issuing bank to firmly tie transaction to issuing bank's charter jurisdiction; ensuring issuing bank's continued involvement in the program or acquisition of licenses by non-bank buyers of loans to enable continued enforcement of the agreed upon contractual rate.
- Automated ACH payment: borrowers are notified automatically each month prior to the payment due date, allowing them "ample time" to cancel. Borrowers paying by ACH less likely to incur late fee.
- Backup servicer – Portfolio Financial Services Company who are able to service loans should Lending Club be unable to. Cross River Bank is the back-up issuing bank if WebBank is no longer the issuing bank.
- "Few traditional banks have established core competencies in technology to the extent that many non-bank lenders have." This leads to traditional incumbents partnering with platforms to access the "technological advantage".
- LC does not participate in "deep subprime lending (FICO less than 550)"
- No balance sheet provides LC with a better ability to weather economic cycles. Diversified funding model as well: 20% self-directed individual investors, 50% individual investors investing through fund/managed accounts; 30% institutional investors. Focus on prime credit quality borrowers, long track record.
- "Also, unlike securitization issuers, Lending Club has been providing loan-level granularity and transparency around all issued loans on the platform to all investors (direct purchasers or securitization investors), which allows all parties to do extensive diligence and monitor changes in underwriting standards on an ongoing basis." The letter adds, "We believe it would be a productive development, and would ensure continued investor protection, for the SEC or other

	<p>regulators to mandate these loan-level disclosure requirements to Lending Club and other credit marketplaces.”</p> <ul style="list-style-type: none"> <li>▪ Cybersecurity standards (ISO27001), privacy standards (GLBA), fraud (robust use of tech systems and data in real-time review), perform necessary elements of CIP/BSA/AML “in conjunction with our issuing bank partners”.</li> <li>▪ Securitization: Don’t need to rely on the market as the “primary avenue” for funding. LC supports the responsible use of securitization to allow greater participation thereby delivering more affordable credit to borrowers.</li> <li>▪ Secondary market advantages: Transparency through price discovery, liquidity – lower return thresholds, low-cost barrier for investor entry, greater diversity of investors, large appetite for asset classes given liquidity.</li> <li>▪ Secondary market disadvantages: “Lending Club has less control over who ultimately owns the Notes. However, as a servicer, Lending Club will always know who owns its portfolios and continue direct dialogue with the investor. Pricing is subject to macro volatility and investor sentiment as with all securities traded on a secondary market. However, Lending Club can mitigate potential volatility by continuing to provide performance and credit information for all loans.”</li> <li>▪ Trends: Borrower mix more representative of overall U.S. population vs. millennials (in beginning); continued focus on responsible lending practices and innovation; partnerships to expand access; foreign governments more active in supporting MPLs.</li> </ul>
<p><b>Lend Academy; Lendit Peter Renton</b></p>	<ul style="list-style-type: none"> <li>▪ Marketplace lending definition is too narrow and not inclusive of all innovation taking place in lending. MPL one category of online lending.</li> <li>▪ Balance sheet lenders: Cash on hand (PayPal, Amazon... etc.), warehouse line of credit (Kabbage, CAN Capital, etc.) or other source debt capital held on the balance sheet.</li> <li>▪ Prosper and Lending Club are the only platforms available to non-accredited investors.</li> <li>▪ Regulators should focus on: 1) cumbersome/wasteful process of having LC and Prosper register each loan with the SEC as a security; 2) maintaining a level playing field between institutional and retail investors to avoid preferential treatment; 3) backup servicing should be mandatory for all platforms who do their own servicing; 4) greater access for non-accredited, retail investors &amp; potential inclusion in retirement accounts; 5) attention to style drift and credit underwriting standards; 6) Lead generation companies – like LendingTree – should be monitored closely due to use of aggressive tactics to acquire borrowers; 7) Alt. regulatory frameworks in the UK, in particular.</li> <li>▪ “Encouraged” by Small Business Borrowers’ Bill of Rights. Current regulations “adequately” protect borrowers from risk.</li> <li>▪ Expansion of access to credit: Upstart (young with good education); Avant (middle-class borrower); Freedom Financial (works with borrowers who are in financial distress); Oportun (targets the Hispanic market); LendUp (sub-prime – those who transitioned out from payday loans); Lenddo (alternative credit score for people without one); Kiva Zip (impact investment to support local businesses).</li> <li>▪ Seeing promising early results of combining alternative data with traditional credit data, though more data needed in the small business space to underwrite accurately.</li> <li>▪ Regulators should pay “close attention” to: Cross River Bank (trying to instill best practices for the online lending industry); ABA (level playing field); Regulation A+ (“lightweight” IPO and a good example of a two-tier regulatory system for small &amp; large companies); P2PFA/FCA (industry-led regulatory framework adopted by the UK FCA. “We believe that the P2PFA/FCA solution is the best public-private regulatory approach to P2P lending in the world and we would support the implementation of a similar model in the US.”</li> <li>▪ Regulatory thoughts to consider: Total cost of operations when delinquencies increase? How much operational efficiency of online lending is the direct result of underinvestment in collections and servicing groups during benign borrower delinquency period? Stress test or audit platforms to ensure they can scale operations properly?</li> </ul>

	<ul style="list-style-type: none"> <li>▪ MPLs are already heavily regulated at the federal and state level.</li> <li>▪ Among the suggestions for government help: Allow home state interest rates to be exported nationally; More efficient access to IRS consumer and small business data; Expand the SBA’s budget to work with MPLs; “Collect loan level data and apply it to FRED – give us aggregated and anonymized insight.”</li> <li>▪ Risk retention: There is “no consensus in the industry on this issue.” The letter further stated: “We would argue that there is no misalignment of interests whether or not a platform has skin in the game. These loans are relatively short term, so within a matter of months investors can see how the loans are performing. If there is underperformance investors can and will choose to stop investing. When this happens the platforms will struggle whether or not they have skin in the game.” Unnecessary to legislate skin in the game for all platforms.</li> <li>▪ Keys to long-term success: clarity on terms for both lender and borrower, MPLs should provide historical data files of all loans ever originated with as many variables as possible, and open API for automated transactions.</li> <li>▪ “If regulators were to push for platforms to increase transparency, provide historical data, and open electronically, the ecosystem will be enabled to filter for best and worst platforms.”</li> <li>▪ Secondary market for retail investors for years, problem is institutional investors left without this form and have to securitize instead. Platforms have strong investor demand so reluctant to devote significant resources to create liquid secondary market. Efforts need buy-in from platforms. “The platforms question whether there will be enough demand today to create a sustainable secondary market for whole loans.” No derivatives market yet, but that will develop eventually allowing investors to hedge.</li> </ul>
<p><b>Lending Tree</b> <i>John Henson</i></p>	<ul style="list-style-type: none"> <li>▪ Subject to regulation at the state and federal level. CFPB, FTC, including UDAAP, Reg Z and Reg N, as well as licensing requirements at state level.</li> <li>▪ Segmentation should be supported, not hindered by approaches that pick winners before letting MPLs fully demonstrate what they’re capable of.</li> <li>▪ “Pursuit of a more harmonized approach to regulating consumer vs. small business loans could open the door to more small business lending and remove somewhat artificial pressures on lenders to select certain operating models that may be given preferences under existing laws that are no longer in-line with the realities of the financial markets.”</li> </ul>
<p><b>Lendio</b> <i>Ethan Hanson</i></p>	<ul style="list-style-type: none"> <li>▪ 80% of the loans that the online marketplace lenders approve through Lendio’s marketplace are less than \$100,000.</li> <li>▪ Cost of capital to SMEs will decrease overtime due, in part, to competition, more mature lending portfolios, and more sophisticated data analysis and underwriting.</li> <li>▪ Market forces will weed out bad actors, while industry organizations and coalitions are forming to produce best practices.</li> <li>▪ “Small segment of online marketplace lending that is pushing for what would amount to cumbersome regulation and would lead to a substantial burden on online marketplace lending.”</li> <li>▪ Any new regulations should be written at the federal level vs. state level.</li> <li>▪ Need for greater amounts of data, with individual’s consent.</li> <li>▪ MPL negative aspects: <ul style="list-style-type: none"> <li>○ Stacking – While SMEs are required to disclose any current loan/advance, many SMEs don’t or disregard the terms of their current agreement. Blame doesn’t just lie with SMEs, but lenders that are willing to stack.</li> <li>○ Disclosures and transparency – Clear disclosures and transparency helpful to all, however the vast majority of SMEs are satisfied with current transparency and disclosures.</li> </ul> </li> </ul>
<p><b>LiftForward</b> <i>Jeffrey Rogers</i></p>	<ul style="list-style-type: none"> <li>▪ Does not accept funds from retail investors, accredited or otherwise. Institutional-focused platform only.</li> <li>▪ Platforms with retail investors should require greater regulatory scrutiny vs. those with a sophisticated investor base.</li> <li>▪ For platforms that originate through a bank, the originating bank “has risk for only one day and has done nothing to ensure credit quality or investor protection.”</li> <li>▪ Data driven credit engine takes human bias out of the equation resulting in a fairer process for distributing capital.</li> <li>▪ Support efforts to require registration/licensing at the federal level than the state.</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Platforms loaning only to small businesses “should be exempt from regulations typical of consumer lending as consumers are the ones that need protection, not small businesses”.</li> <li>▪ Referral mechanism would drive greater customer activity in the sector. Efforts to raise awareness would also help.</li> <li>▪ Risk retention: LiftForward invests a portion of its money in every loan it originates. Reputational risk brings greater accountability.</li> <li>▪ Still too early for the secondary market to take off, but it will develop.</li> <li>▪ US should emulate UK approaches to supporting its MPL sector.</li> </ul>
<p><b>Manatt, Phelps &amp; Phillips, LLP</b> <i>Brian Korn</i></p>	<ul style="list-style-type: none"> <li>▪ Risk retention: skin-in-the-game is a “knee-jerk” reaction.</li> <li>▪ Instead, force investor diversification across the loan which is effective for spreading/controlling risk.</li> <li>▪ Regulation cannot be a one-size-fits-all approach.</li> <li>▪ “Advisory dialogues on specific situations would address the needs of the industry and its stakeholders and create a level playing field for industry participants.”</li> <li>▪ Problems to a secondary market forming: <ul style="list-style-type: none"> <li>○ Loan and payment-dependent notes are not standardized;</li> <li>○ Marketplace loans have high prepayment risk generally making valuation tricky;</li> <li>○ Securitization emerged as a more efficient way to recycle capital for investors and originators.</li> </ul> </li> </ul>
<p><b>Milken Institute</b> <i>Brian Knight</i></p>	<ul style="list-style-type: none"> <li>▪ Amend the relevant banking laws to codify “valid when made” doctrine.</li> <li>▪ Develop uniform, consistent national regulatory regime for non-bank lenders that fosters innovation and competition “while addressing the risks posed by the lending of non-depository funds.”</li> <li>▪ Provide lenders with guidance, appropriate safe harbors to avoid both inadvertent discrimination and meritless litigation.</li> <li>▪ Evaluate whether risk retention, as required under Dodd-Frank, is appropriate for MPLs “given marketplace lenders’ competitive environment and current lack of systemic risk.”</li> <li>▪ Marketplace lending is a broad term. There are some similarities between platforms, but also significant differences “that may be material from a policy or regulatory perspective.”</li> <li>▪ “The primary limit to a marketplace lender’s reach is regulatory, with some states requiring licensing to operate within their boundaries unless there is a federal preemption. To address this limitation, marketplace lenders generally either have to get licenses on a state-by-state basis, increasing compliance cost and complexity, or partner with a bank to leverage the bank’s ability to preempt certain state laws. Both of the current options are suboptimal because they introduce needless costs and complication that harm borrowers and investors.”</li> <li>▪ Bank-partnership model “cast into doubt” by recent litigation which “should be addressed.” And, “a national lending charter should be developed to provide the uniform and efficient regulation necessary to protect consumers and increase innovative competition.”</li> <li>▪ Appropriate regulator for national lenders “would most likely be one of the bank chartering regulators.” Separately, the SEC, FTC, and CFPB “would regulate the portions of marketplace lending that intersect with their jurisdictions.”</li> <li>▪ Risk retention: It’s “unclear whether risk retention is a good fit for marketplace lending.” Currently, a highly competitive space (traditional lenders, MPLs, new entrants), with focus solely on lending (vs banks with multiple lines of business), and need to maintain a reputation by appropriately measuring risk, otherwise the lender will face market discipline and borrowers and investors will move elsewhere. In addition “risk retention will force a change in business model that may not provide sufficient benefit to outweigh the cost.” In particular, whole loan sales should remain exempt from such requirements.</li> </ul>
<p><b>Missouri Credit Union Association</b> <i>John Thomas</i> <i>Don Cohenour</i></p>	<ul style="list-style-type: none"> <li>▪ Question the effectiveness of marketplace lending on expanding access to undeserved credit markets.</li> <li>▪ Disagree with the suggestion that online marketplace lending is the only option to fulfill the credit needs of the underserved.</li> <li>▪ Request relief from existing statutory cap that limits a credit union’s business lending to 12.25% of its total assets.</li> <li>▪ Comprehensive study needed on the risks likely to arise from MPLs.</li> </ul>
<p><b>MonJa</b> <i>James Wu</i></p>	<ul style="list-style-type: none"> <li>▪ Provider of market insights for the MPL industry.</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Primary reason for investor interest – high returns. Also, marketplace notes less susceptible to interest rate risk due to shorter maturities and amortized payment schedule. However, “While investors are entering marketplace lending because of higher returns, the flip side is the possibility of higher risk, such as loss of capital.”</li> <li>▪ Establishment of a secondary market would likely reduce the risk premium for marketplace notes and decrease borrowing costs.</li> <li>▪ Growing competition within marketplace lending will push lenders to expand their lending pool to those not traditionally served.</li> <li>▪ The federal government could take a role in unifying rules such as usury caps and investor eligibility. Inconsistent rules favor incumbent banks.</li> <li>▪ MPLs should fall under the oversight of the CFPB.</li> <li>▪ “Platforms are not devoting similar resources to compliances initiatives as traditional banks, which face routine audits of a number of regulatory agencies.”</li> </ul>
<p><b>John Moore</b></p>	<ul style="list-style-type: none"> <li>▪ “You don't have face to face contact with anyone you're dealing with &amp; there is no physical office location where business is conducted. Having said that, I would encourage expanding legitimate lending services throughout the consumer marketplace because some people simply do not have convenient local access to competitive lending services.”</li> </ul>
<p><b>Mountain BizWorks</b> <i>Patrick Fitzsimmons</i></p>	<ul style="list-style-type: none"> <li>▪ CDFI in North Carolina concerned about small business indebtedness incurred from online lenders.</li> </ul>
<p><b>National Association of Federal Credit Unions (NAFCU)</b> <i>Kavitha Subramanian</i></p>	<ul style="list-style-type: none"> <li>▪ Need to study the impact of post-Dodd-Frank reforms and regulatory burdens on credit unions since the financial crisis and their effect on the availability of credit and the growth of online MPLs.</li> <li>▪ Online lenders are not subject to TILA and therefore able to operate more quickly with fewer compliance costs since they don't follow the same standards as traditional lenders. “The online market is largely a proliferation of peer-to-peer lenders, hedge funds, or other entities that are not subject to consumer protection laws such as TILA.”</li> <li>▪ Need to study practices of online lenders engaging in “rent-a-bank,” for instance, to circumvent the standards imposed on traditional lenders.</li> <li>▪ Modifying the Member Business Loans (MBL) cap would provide economic stimulus and would not cost taxpayers.</li> <li>▪ Have Treasury conduct a similar study to its 2001 report on small business lending marketplace to highlight the unique role credit unions play.</li> </ul>
<p><b>National Association of Industrial Bankers</b> <i>Frank Pignanelli</i></p>	<ul style="list-style-type: none"> <li>▪ Developing new regulations in this area is difficult. Need to examine the big picture - no unintended consequences.</li> <li>▪ Significant gaps in regulating the internet and other vital infrastructure.</li> <li>▪ Equalize the regulations on all lenders and encourage the development of banks.</li> <li>▪ Originate to Sell Model = Originate or Die. Banks better able to adjust lending activity to survive downturns.</li> <li>▪ Two vulnerabilities of MPLs: the need to constantly originate loans regardless of market conditions, high liquidity risk.</li> <li>▪ “The current regulatory scheme making only the laws of the bank's home state applicable works well for credit originated by a bank and offers the added advantage that the bank is highly regulated both for compliance and safety and soundness. This current system must be preserved.”</li> <li>▪ For lenders operating on the originate to sell business model, in particular, "we recommend that they do not become the primary credit providers to key industries and segments of the economy like they did with the housing industry prior to 2008 without significantly enhanced oversight to maintain the confidence of investors."</li> <li>▪ Need to study just how scalable MPLs can truly be.</li> <li>▪ Biggest public policy issue is ensuring stable and adequate sources of credit to vital segments of the economy. The Great Recession may not have happened if banks played a larger role in the U.S. credit markets.</li> </ul>

	<ul style="list-style-type: none"> <li>No need for additional regulation. “Current regulation of consumer credit has arguably reached a breaking point in how far the government can go in enforcing compliance. Imposing similar burdens on small business lending risks significantly constraining that type of credit.”</li> </ul>
<b>National Association of Realtors</b> <b>Chris Polychron</b>	<ul style="list-style-type: none"> <li>Model of most interest is the development of crowdfunded financing for homeowners.</li> <li>Implementing alternative credit scoring methods could expand access to financing without heightening the risk to overall housing market.</li> <li>Highlight the study, <i>The State of Small Business Lending: Credit Access during the Recovery and How Technology May Change the Game</i>, and how alternative lending can be beneficial to small businesses.</li> <li>"Combining the modern outlook of online lending and enhancement of traditional banking industry’s approach to underwriting standards would create an outcome that would benefit both the industry and consumers."</li> </ul>
<b>North American Securities Administrators Association (NASAA)</b> <b>Judith Shaw</b>	<ul style="list-style-type: none"> <li>Unlike SEC, states “have the authority to develop substantive requirements to address new issues with securities offerings as they may arise.”</li> <li>P2P lending is “opaque,” including a lack of transparency.</li> <li>"Rather, this transaction is a speculative investment for the investor. The investor relies on an intermediary to conduct due diligence, provide an accurate assessment of the loan, collect payment on the loan, and enforce the borrower’s obligations under the loan. The intermediary ranks the borrowers’ credit worthiness based on proprietary algorithms not disclosed to the individual investor.”</li> <li>There are substantial risks to the investor, including transfer of the majority of risk of delayed payment or even non-payment to the investor through decoupling of the loan transaction. The investor assumes not only the risk of non-payment or default by the borrower but any poor performance or stressed financial condition of the intermediary, which is not subject to traditional bank safety and soundness regulation.”</li> </ul>
<b>National Consumer Law Center</b> <b>Lauren Saunders</b>	<ul style="list-style-type: none"> <li>Concerns about big data, though focus more on the payday loan market.</li> <li>Reflected on a report released in 2014, <i>Big Data: a Big Disappointment for Scoring Consumer Creditworthiness</i></li> <li>Use of consumer data inconsistent with the protections found in Fair Credit Reporting Act. Poor underwriting from skewed origination incentives. Compulsory electronic payments weaken consumer control over their bank accounts. Evasion of state laws. And the use of lead generators which could lead to fraud or the leaking of sensitive financial information.</li> <li>Undisclosed algorithms: It is impossible to analyze the algorithm for potential racial discriminatory impact. Models are also unproven.</li> <li>There is inadequate underwriting for ability to pay.</li> <li>The rent-a-bank model evades state usury laws. “We believe that state laws offer important protections that should not be evaded.”</li> </ul>
<b>National Pawnbrokers Association</b> <b>Dana Meinecke</b>	<ul style="list-style-type: none"> <li>“Greatly concerns us” that Treasury is considering a marketplace lending expansion.</li> <li>MPLs “do not always obtain the necessary licenses in each state” where the customer is situated and “may not comply with state or locally applicable legal requirements.”</li> <li>“As is commonly understood, less regulated providers can undercut the pricing of - and eventually push out --their regulated counterparts because the formers' compliance costs are lower or non-existent.”</li> <li>Unclear of the extent to which online MPLs are “really just partners of chartered depository institutions.”</li> <li>“We are not persuaded” that MPLs will serve undeserved persons as frequently or as well as our industry does.</li> <li>Expansion of the Military Lending Act and new small-dollar lending regulations under CFPB consideration, MPLs “will have to sustain the same compliance responsibilities and associated costs as we do.”</li> <li>MPLs should not charge fees above state/local usury law allowance “and comply less.”</li> <li>Online MPLs are a shield for and shelter offshore lenders, tribal lenders, and online interstate payday lenders.</li> <li>MPLs are not sufficiently important to cause systemic risk or another subprime loan crisis.</li> <li>Risk retention: We’ve always had skin in the game as it adds a layer of protection from irresponsibility.</li> </ul>
<b>Native American Financial Services Association</b>	<ul style="list-style-type: none"> <li>Common goal amongst tribes: defending sovereignty; encouraging tribal economic development; and protecting consumers.</li> </ul>

<p><b>Barry Brandon</b></p>	<ul style="list-style-type: none"> <li>▪ Online lending is not so large that it cripples the economy and there is a need to avoid the segmentation of institutions based on characteristics as distinctions are of little importance.</li> <li>▪ No NAFSA members make loans to small businesses.</li> <li>▪ Operation Choke Point has made it much more difficult to maintain banking relationships.</li> <li>▪ Tribes should be encouraged to enter the online lending industry.</li> <li>▪ NAFSA members are balance sheet lenders and the all have skin in the game.</li> </ul>
<p><b>OnDeck</b> <b>Daniel Gorfine</b></p>	<ul style="list-style-type: none"> <li>▪ Published OnDeck Core Principles bringing fair, efficient, and transparent financing commitments to customers.</li> <li>▪ More than 2,000 data points assessed under OnDeck’s underwriting model per application.</li> <li>▪ Risk retention: “We have large bank facilities with leading national banks, including Bank of America and SunTrust, in place, which allow OnDeck to originate and hold the majority of our loans on our balance sheet. We retain the first loss position in all of our bank facilities. This approach ensures we retain risk around our lending activities, have an inherent interest in offering responsible and sustainable credit products, and are as interested in the success of our small business customers as our customers are in their own success.”</li> <li>▪ “Earlier last year, OnDeck completed the first non-SBA, investment-grade rated small business loan securitization by an online lender in which we retained a 5% first loss risk position if the loan is not repaid; our understanding is that Dodd-Frank’s risk retention rules would require such “skin in the game” in asset-backed securitization sales beginning in 2016.”</li> <li>▪ Partnerships with Intuit, Prosper, Angie’s List, BBVA Compass and others to improve underwriting. TILT Forward – “OnDeck is extending its leading data analytics and loan process automation to participating mission focused [CDFI] lenders across the United States.”</li> <li>▪ Launched BusinessLoans.com to provide businesses with comprehensive information on financing options.</li> <li>▪ TRUSTe certified website with key data privacy and protection principles in place.</li> <li>▪ Overlapping regulatory requirements between states and the federal government. At this time it is premature for additional regulation to be imposed to codify particular lending models, credit products at this stage.</li> <li>▪ Steps policymakers can make: Support bank referrals and partnerships; support government and technology platform initiatives (increased access to government data); regulatory harmonization (create cross-agency, federal and state, FinTech working groups to engage with industry to streamline and harmonize existing regulations).</li> </ul>
<p><b>Online Lenders Alliance</b> <b>Lisa McGreevy</b></p>	<ul style="list-style-type: none"> <li>▪ Focus on question 9 – how government can facilitate positive innovation in lending, etc.?</li> <li>▪ Need for national standards as there are a “dizzying array” of state and local laws vs. bank competitors.</li> <li>▪ National charter needed for “non-depository” interstate online lending (consumer and business loans) <ul style="list-style-type: none"> <li>○ Ex. HR 1566, the Consumer Credit Access, Innovation, and Modernization Act, would create a federal charter for consumer credit corporations.</li> </ul> </li> <li>▪ OCC would supervise the national charters, as well as the CFPB.</li> <li>▪ <i>Madden vs. Midland</i> case has resulted in cutbacks to investment in the jurisdiction of the Second Circuit Court (NY, CT, VT).</li> </ul>
<p><b>Oportun</b> <b>Mitria Wilson</b></p>	<ul style="list-style-type: none"> <li>▪ MPLs still targeting the upper echelons in credit, but likely to expand to underserved segments of the market.</li> <li>▪ LendingClub’s average borrower has an annual income of \$73,945 and a FICO credit score of 699.</li> <li>▪ Prosper borrower has an income that is 51 percent higher than the average American household and a FICO credit score of about 700.</li> <li>▪ Ninety percent of Oportun’s customers reside in low- or moderate-income communities. Our customers have an average income of \$32,100 a year, and receive an average loan amount of \$2,000.</li> <li>▪ Regulated under a number of state and federal regulations.</li> </ul>
<p><b>Opportunity Finance Network</b> <b>Liz Lopez</b></p>	<ul style="list-style-type: none"> <li>▪ Urge caution on reliance on MPLs as the “primary strategy” to reach underserved communities.</li> <li>▪ MPLs offer more and ever changing financial products with minimal oversight from regulators, no requirements related to clarity and transparency of loan terms, and no safeguards for vulnerable borrowers.</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Online marketplace lending environment has some parallels “to the kind of lending that created the mortgage bubble and contributed to the housing collapse.”</li> <li>▪ Require lenders to "clearly state" APR of their loans; collect and publish data on online lenders and their borrowers; and develop a robust system for dealing with small business complaints to ensure proper recourse.</li> </ul>
<p><b>Opportunity Fund</b> <b>Gwendy Brown</b></p>	<ul style="list-style-type: none"> <li>▪ Largest non-profit microlender in CA</li> <li>▪ Investors hungry for yield, yet little care for who or how much they lend to.</li> <li>▪ Too much capital being provided over a short period of time at very high APRs (50-150%).</li> <li>▪ “With both balance sheet and marketplace lenders, the needs of the investors seem to come before those of the business being financed.”</li> <li>▪ SMEs often take out cash advances, which can result in businesses being unable to make debt payments. Head to Opportunity Fund to try to get out of the “debt-stacking trap”.</li> <li>▪ Small businesses should be afforded the same protections as consumers. Deceptive practices used in the small business space including businesses being misinformed about cost of a loan, the repayment terms, hidden fees, and lack of information.</li> <li>▪ Collaborated with other small business lenders to create the Small Business Borrower’s Bill of Rights.</li> <li>▪ Under a “rent a charter” model, “banks should disclose the pricing of any business loans they facilitate for an online lender with the same transparency as loans they make directly.”</li> <li>▪ “The use of loan capital from traditional financial institutions to put hundreds of thousands of Main Street small businesses into harmful debt is a systemic risk.” Responsible lending practices are needed and banks should instruct alternative platforms to adopt such practices.</li> <li>▪ Since SMEs still rely on banks for funding it is essential to remove barriers banks currently face. Give CRA credit to banks successful in assisting SMEs from undeserved markets (through referral partnerships in particular). Continued support to CDFIs and others like them is crucial to be able to reach undeserved markets.</li> <li>▪ Launched partnership with Lending Club, whereby \$10 million in loans will be paid over a period of 5 months to 400 small businesses operating in underserved areas in CA.</li> </ul>
<p><b>Orchard Platform</b> <b>Matthew Burton</b></p>	<ul style="list-style-type: none"> <li>▪ Borrowers have leverage in the relationship with MPLs due to platforms’ proliferation.</li> <li>▪ The practice of acquiring borrower data “is neither new nor unique” to marketplace lending. Bad actors are singled out due to the “social nature” of the industry and reliance on a continuous stream of new investors.</li> <li>▪ The proliferation and use of data has led additional firms into the lending space – a boon for borrowers.</li> <li>▪ Marketplace lending is the new “sunlight banking” system vs. “shadow banking.”</li> <li>▪ Potential to increase access to underserved businesses/consumers. Investors in search of greater yield will drive platforms to meet the demand for higher risk borrowers.</li> <li>▪ Regulators need to work together on a “holistic approach” to MPL (ex. Look at “light touch” approach in the UK.</li> <li>▪ Streamlined regulatory framework needed. Inconsistent case law like <i>Madden</i> is not helpful. Underscores the need for a clearer framework for non-bank relationships with banks.</li> <li>▪ “We have seen the application of leverage to be widespread in its prevalence but measured in its implementation, with generally conservative advance rates and the establishment of comprehensive covenants and collateral eligibility criteria.”</li> <li>▪ Secondary market is fairly limited. Investors limited to the use of dedicated broker-dealers that understand the instruments and are equipped.</li> <li>▪ The only meaningful secondary market is securitization at present. The frequency and size of securitization deals are expected to grow. However, the long-term impact from <i>Madden</i> is difficult to predict, and there is a need for standardized lending terms, uniform underwriting guidelines, more historical data (credit performance), not to mention the fact that rating agencies are still familiarizing themselves with the new products. There is also a prepayment risk that makes loan valuation difficult. Need encourage its growth!</li> <li>▪ Important to note that the downside resulting from the influx of institutional investment means that retail investors get squeezed. Some originators have moved to protect that class of investors, while others have moved away to solely embrace institutional investors.</li> </ul>

<p><b>Otoe-Missouria Tribe of Indians</b> <i>John Shotton</i></p>	<ul style="list-style-type: none"> <li>▪ Lending entities regulated by independent tribal regulatory commission, similar to gaming. The entities do not make small business loans.</li> <li>▪ Lending entities are “governmental operations.” As such, they are regulated by sovereign governments, and there is a need for respectful consultation in whatever regulatory process Treasury undertakes.</li> <li>▪ Tribal financial regulators follow “the principles” of consumer privacy provisions under GLBA.</li> <li>▪ The vast majority of borrowers are subprime.</li> <li>▪ The tribe does not offer traditional “payday” products. Instead, the principle and interest is amortized over a series of installments.</li> <li>▪ Operation Choke Point presents a significant problem in that banks have been pressured not do business with online lending companies.</li> <li>▪ There are inconsistencies in state law which are immaterial as lending activity occurs on the reservation. The tribe is not subject to state regulations.</li> <li>▪ Risk retention: lenders have skin in the game as they are balance sheet lenders who retain the risk of default.</li> <li>▪ Development or use of a secondary market is a non-issue for now.</li> </ul>
<p><b>P2PFA</b> <i>Samantha Ridler</i></p>	<ul style="list-style-type: none"> <li>▪ Lays out the differences between UK, U.S. regulations and between the platforms operating in the U.S. and the UK.</li> <li>▪ The key partnership for P2PFA members is with the UK government which has lent £500M to SMEs through the British Business Bank generating increased liquidity and strengthened reputations.</li> <li>▪ UK regulators: platforms must have “comprehensive arrangements” in place to ensure that a back-up servicer is available if a platform goes under. There are also limited prudential requirements in the UK since the platforms do not take balance sheet risk.</li> <li>▪ The U.S. government should emulate UK efforts in supporting MPLs.</li> <li>▪ "Formal regulation has built on self regulation by the P2PFA and has helped added credibility to the sector."</li> <li>▪ In the UK: retail investors are protected in SME lending, in consumer lending it is the retail investors AND borrowers who are protected.</li> <li>▪ US Treasury should be aware of the following P2PFA lessons learned: 1) need to outline clearly which specific regulation applies to lending platforms; 2) need for a point person at the regulator who is focused on MPL; 3) understanding and resolving unintended impacts from integration of MPL to existing regulations.</li> <li>▪ Risk retention; Platforms not required to have skin in the game. As a result, platforms are able to act in the interests of both borrowers and lenders. Transparency of loan performance is just as good as skin in the game.</li> <li>▪ Rules applied to platforms are principles based vs. rule based, with principles supported by “some specific rules”. If rules are not clear than principles apply, thus avoiding potential burdens on platforms.</li> <li>▪ Comment letter also details the main differences contributing to the slow platform growth in EU: Investor limits, barring institutional investors, and disclosure requirements.</li> </ul>
<p><b>PayNet</b> <i>William Phelan</i></p>	<ul style="list-style-type: none"> <li>▪ Leading provider of credit ratings on small businesses.</li> <li>▪ Maintains the largest proprietary database of small business loans, leases and lines of credit encompassing over 23 million contracts worth over \$1.3 trillion.</li> <li>▪ Data shows banks lose money/break even on a \$100,000 loan to an SME. Underwriting/compliance costs represent 50% of expense to issue an SME loan.</li> <li>▪ Between 2008-2012, bank loans to SMEs fell 20%, yet non-bank market share of transactions to borrowers less than 5 years in business went up more than 300% since 2008.</li> <li>▪ According to a PayNet study, 16-to-21% of SME credit applicants needs remain unfilled through traditional lenders. The share of bank lending to businesses between 0-5 years in business is down from 46% in 2008 to 27% of all lending in YTD 2015.</li> <li>▪ “Clear and consistent growing market share” for non-bank lending from 10% in 2008 to 38% in YTD 2015.</li> <li>▪ “PayNet AbsolutePD Model has been tested and used to assess small businesses without attention to consumers.”</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Compliance with bank regulations is the biggest challenge which holds back bank purchases of loans from alternative lenders. Banks need to develop a compliance program in purchasing these loans that is consistent with the regulations.</li> <li>▪ The federal government should provide regulators with leeway to use non-traditional assessments of credit.</li> <li>▪ Secondary market: Regulation D “presents uncertainty for marketplaces because the SEC may consider SME loans to be bona fide securities.” Clear ruling on this is needed to remove uncertainty about the treatment of SME loans between primary and secondary investors.</li> <li>▪ Need to maintain “SME lending as a commercial activity rather than regulated under the Fair Credit Reporting Act.” It is essential to continued market growth and to filling the credit gap.</li> </ul>
<p><b>PayPal, Inc.</b> <i>Jeff Levine</i></p>	<ul style="list-style-type: none"> <li>▪ PayPal Credit, PayPal Working Capital</li> <li>▪ “PayPal retains an interest in the loans and participates in the credit risk. As such, the credit quality of the portfolio and the borrower’s ability to pay is a key driver of each program.”</li> <li>▪ Sufficiently regulated</li> <li>▪ Evaluation of business behavior through PayPal, without the need for a third-party or traditional data sources.</li> </ul>
<p><b>PeerIQ</b> <i>Manavinder Bains</i></p>	<ul style="list-style-type: none"> <li>▪ Comments reflect on the discussions during the August 5 U.S. Treasury Marketplace Lending Forum.</li> <li>▪ PeerIQ is a financial information services company providing institutional investors with the tools to analyze and manage MPL risk.</li> <li>▪ Potential concern: rapid platform proliferation as it may contribute to decreased underwriting standards. However, “We are observing quite the opposite” of that concern as the “mix of high-grade loans on leading platforms is actually increasing.”</li> <li>▪ However, regulators should encourage data collection to monitor credit trends. PeerIQ allows investors to survey credit trends in real-time.</li> <li>▪ The uncertainty stemming from the <i>Madden</i> decision may impact the growth of marketplace lending.</li> <li>▪ Risk retention: MPLs subject to market discipline, especially from institutional investors. Transparency drives accountability. Institutional investors also use benchmarks to compare risk across multiple loan originators.</li> <li>▪ MPLs do not have the loss absorption capacity and are not in the business of absorbing credit risk. Requiring risk retention would force a significant business model shift.</li> <li>▪ Secondary market: loan size is currently small and no two loans represent the same credit risk, or generate the same path of cash flows. Loans are not fungible and each loan must be priced separately.</li> <li>▪ Often cited risk factor of 10-Ks of publicly traded non-banks: non-banks rely on securitization market for funding. If the market freezes, non-banks would have to curtail credit extension, and be forced to raise rates.</li> <li>▪ Need to continue to monitor the structure of securitizations. Right now they are straightforward.</li> <li>▪ Improving transparency, simplicity and standardization are keys to promoting a securitization market.</li> <li>▪ Encourage: loan-level transparency to promote secondary ABS liquidity and price discovery; benchmarks, standardization, normalization to promote consistent representation of risk; risk management tools including hedging and other analytical tools that can forecast and stress cashflows under adverse conditions.</li> <li>▪ <b>Other:</b> institutional infrastructure needs to keep pace with the growth of MPLs; market surveillance to monitor originating volumes, credit quality, pricing trends; standardized valuation and pricing methodology to the benefit of investors; and institutional investors currently have an asset/liability mismatch.</li> </ul>
<p><b>Pepper Hamilton, LLP</b> <i>Gregory Nowak</i></p>	<ul style="list-style-type: none"> <li>▪ Need for the creation of a secondary market “without the rigmarole involved in the formation of an exchange.”</li> <li>▪ “Given the small value of these loans, the regulatory burden imposed by Regulation ATS, for example, or the need to be licensed as a registered broker-dealer in order to facilitate these transfers, is overwhelming and neither necessary nor appropriate.” A more streamlined approach needed, borrowing elements from the JOBS Act.</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Electronic data is not a substitute for true underwriting. Need to strike the right balance between underwriting and electronic scoring. Responsibility of loan originator.</li> <li>▪ “Self-preservation and the need to protect against hacks or cyber-attacks have required the platforms to be secure. Those online presently have invested significant sums and continue to invest significant sums to ensure data integrity and privacy. New rules and regulations in that regard are not necessary; regulatory interpretive guidance and clear understanding of what is required is, on the other hand, always welcome.”</li> <li>▪ SME lenders not as limited by the states in ability to penetrate local markets compared to retail lending platforms. Retail, however, comes with faster decision making when it comes to underwriting vs. SME lending platforms.</li> <li>▪ MPLs still focusing on the creditworthy market, not underserved. More opening seen on SME side to address the underserved market.</li> <li>▪ Marketplace is still young and it is difficult to assess whether models are good or bad at predicting credit risk.</li> <li>▪ Retail platforms: “What's essential to understand is that the identity of the originator is in fact a bank subject to the full panoply of federal banking regulation and/or state banking regulation. There is no need for additional regulation and if anything, the identity of the lending institution needs to be strengthened as opposed to watered down.”</li> <li>▪ Valid at inception doctrine remains the law of the land in all states except those under the Second Circuit’s jurisdiction following <i>Madden</i>. A federal solution is desirable vs. a patchwork of state rules.</li> <li>▪ The federal government can help to facilitate the development of a robust secondary market, modernize the definition of "security," facilitate mutual fund investment in MPL loans, generate guidelines covering when a broker-dealer needs to be involved in this business.</li> <li>▪ Risk retention: No need. The full risk of loan is borne by the investor. Disclosure is explicit in that these investments are speculative in nature and investors in the loans assume all risk of default.</li> <li>▪ Secondary market: “No major disadvantages to a secondary market provided it evolves without the need for ‘33 Act registered securities. If every marketplace loan needed to be subject to a registration statement, the market will not work due to the costs imposed.” JOBS Act 506(c) general solicitation rules make sense for these types of instruments assuming regulators decide that the loans are in fact securities subject to fed securities laws. This remains an open question.</li> </ul>
<p><b>Prosper</b> <b>Aaron Vermut</b></p>	<ul style="list-style-type: none"> <li>▪ Existing regulation adequately covers us: Dodd-Frank, TILA, ECOA, FCRA, Servicemembers Civil Relief Act, Electronic Funds Transfer Act, Electronic Signatures in Global and National Commerce Act/Uniform Electronic Transactions Act, privacy and data security laws, Bank Secrecy Act, Federal and state debt collection laws, following best practices even when these laws are not technically applicable, and federal and state securities laws.</li> <li>▪ “We support efforts to provide meaningful, incremental protection, but believe this is best achieved through laws and regulations applicable to all consumer and small business lenders rather than through regulations applicable only to marketplace lending platforms.”</li> <li>▪ Risk retention: regulation should ensure that MPL platforms don’t face structural disadvantages relative to other models involved in the sale of loans and/or separation of servicing rights from loan ownership. Sufficient skin in the game (full transparency of platform’s loans and performance, for example) reduces the need for retention of risk.</li> <li>▪ Government should facilitate a dialogue on how to apply “important principles of consumer protection” without hindering the MPL model.</li> <li>▪ “We do not believe the marketplace channel by itself is going to solve the important public policy challenge of providing appropriate credit products to underserved communities.”</li> <li>▪ There are significant barriers to innovation in working with issuing banks as “few banks are prepared to work with marketplace lending companies.”</li> <li>▪ Greatest competitive distortion found at the state level as some states don’t permit consumers to invest on marketplaces.</li> <li>▪ Risks to marketplace lending are similar if not the same as traditional consumer lending. The current regulatory regime is sufficient to monitor and address.</li> <li>▪ Questions on leverage are best addressed through obligations on investors rather than MPL platforms.</li> </ul>

<p><b>U.S. Public Interest Research Group (PIRG) / Center for Digital Democracy</b>  <b>Edmund Mierzwinski</b>  <b>Jeffrey Chester</b></p>	<ul style="list-style-type: none"> <li>▪ Securitization: so few, and regulators should continue to monitor at this point.</li> <li>▪ Advise against granting new entrants "safe harbors" and other special treatment from fair lending or credit laws.</li> <li>▪ Treasury should work with other regulators to integrate the online lending sector within the financial services regulatory sector.</li> <li>▪ Concur with concerns/recommendations from AFR (skin in game), CRL (online lender compliance with state law), NCLC (shoddy underwriting, mandatory/default use of preauthorized electronic payments), Woodstock Institute (need for government to protect small business from unfair lending practices).</li> <li>▪ No clear evidence that the internet-based model is the key reason why borrowers prefer them.</li> <li>▪ Majority of loans going to those with prime ratings. There is currently very little reach to the unserved, underserved markets. However, additional research is needed.</li> <li>▪ Online underwriting: A "black Box" containing structured/unstructured data sets, algorithms, etc. These require safeguards due to the lack of privacy protection. Treasury needs to look into these boxes.</li> <li>▪ Propose a national consumer and small business regulatory framework to protect privacy related to online lending/credit.</li> <li>▪ "A full public accounting on the use of "alternative data" sources and how they are analyzed to make credit decisions is also required."</li> <li>▪ Examine, in-depth, the use of automatic withdrawal by platforms.</li> <li>▪ Distinctions between online lenders with traditional lenders are "less significant." The cost efficiencies claimed by platforms are overshadowed by the costs of customer acquisition.</li> <li>▪ Treasury needs to conduct a "holistic analysis" on operations of the digital-lending landscape, beyond just online lenders, but to the overall financial services industry, in general.</li> <li>▪ Concerns about "cherry-picking" borrowers "raises questions about fairness and the credit scoring process used to determine who will receive funding."</li> <li>▪ Online lenders need "the same analysis and oversight" required of traditional lenders. "The cost advantages that online lenders now enjoy because they do not have to demonstrate the range of regulatory compliance as their competitors is far outweighed by the need for Treasury and other financial regulators to protect the public from practices that could harm their economic security."</li> </ul>
<p><b>QTX Systems</b>  <b>James Bertoni</b></p>	<ul style="list-style-type: none"> <li>▪ QTX is a multi-asset management platform.</li> <li>▪ Seeing a continued move to point-to-point service, thereby removing the traditional agent.</li> <li>▪ P2P lending is expanding rapidly in asset management "but the support infrastructure to manage the accumulated loan portfolios doesn't exist, generally."</li> <li>▪ Far greater attention needs to be paid to middle and back office processing, reconciliation, recording and reporting.</li> <li>▪ MPLs have the potential to render payday lenders a thing of the past. Will access underserved areas over time.</li> <li>▪ Credit scoring models are good when it comes to predicting current borrower condition, but take little account of future unexpected changes in employment.</li> <li>▪ There are "significant gaps" in the area of regulatory compliance, especially in regards to "after transaction" management.</li> <li>▪ The question being: should the consumer loans, crowd funded by third party lenders, but titled to the originator be explicitly ring fenced from general creditor demands. The provision of back up services hasn't been tested and isn't likely to be robust in the context of maintaining an orderly market."</li> <li>▪ "Currently there is no means available to novate large amounts of loans should one of the major market lending platforms go bankrupt." There's a need to develop a process by which the transfer of large amounts of loans can happen that won't significantly disrupt the market. One suggestion: "The Federal government becoming a market lending repository in the event of a bankruptcy. The Federal government would put up no money but in the event of a platform bankruptcy but would serve as loan custodian and administrator."</li> <li>▪ Cybersecurity threats reduced due to more advanced technology with MPLs. Current regulation is adequate.</li> </ul>

	<ul style="list-style-type: none"> <li>▪ “The desire to invest in market lending product has run far ahead of the ability to record, aggregate, report and risk manage the resulting portfolios.” This represents a major risk to the entire industry.</li> <li>▪ “Once pricing standards have been established and data can be normalized across originator platforms benchmarks and derivative products will surely develop.”</li> <li>▪ Hedging consumer loan books could provide significant balance sheet relief, yet this could also lead to excess leverage.</li> </ul>
<p><b>Rapid Advance</b> <i>Joseph Looney</i></p>	<ul style="list-style-type: none"> <li>▪ Rapid Advance is a provider of working capital to small businesses. Seen as a balance sheet/portfolio financier.</li> <li>▪ “We monitor the laws of all 50 states plus the District of Columbia and set state specific rates and product availability based on applicable state law.”</li> <li>▪ Treasury needs to understand the difference between commercial and consumer lenders and the regulations applied to each. Consumer lending is more regulated than business lending, for instance, “out of concern for the relatively unequal bargaining power of the creditor over a consumer borrower.”</li> <li>▪ Electronic data improves the speed of the underwriting process and decreases occurrences of fraud</li> <li>▪ Take payments on daily/weekly basis to avoid the business from having to make one lump sum payment.</li> <li>▪ Ease of access to tax information for better underwriting purposes is needed.</li> <li>▪ Experienced high loss rates in 2008, changed underwriting rules and had lowest loss year in 2009. Models can quickly adapt to changing environments.</li> <li>▪ Robust security measures in place to protect data through the implementation of industry best practices and government guidance.</li> <li>▪ Lenders need to clearly and accurately disclose how customer data will be used.</li> <li>▪ Treatment of small business financing by marketplace lenders should be the same as traditional business lenders. There are no material distinctions between loans offered by marketplace lenders and traditional lenders.</li> <li>▪ Need for a “thoughtful and comprehensive” study of the small business finance market.</li> <li>▪ “We believe federal policymakers should defer to state policymakers and track what they are doing to see how the state laws develop.”</li> </ul>
<p><b>Revenue Trades</b> <i>Joseph Williams</i></p>	<ul style="list-style-type: none"> <li>▪ “We have since focused our technology to provide wholesale product firms with distribution support and short term loans contingent on purchase order acquisition milestones. The select questions answered in this reply reflect our experiences building our platform in this space; which is in the process of being tested before facilitating automatic transactions.”</li> </ul>
<p><b>Andrew Schwartz</b> <i>Professor, University of Colorado Law School</i></p>	<ul style="list-style-type: none"> <li>▪ Discussed two of his articles: <i>Consumer Contract Exchanges and the Problem of Adhesion and Arbitration and the Contract Exchange</i>.</li> <li>▪ “The law should therefore clarify that while exchange-traded consumer contracts fit the formal definition of contracts of adhesion, they should be enforced as if they were negotiated.”</li> <li>▪ “Judicial respect for arbitration and arbitration clauses, and this respect should extend to the context of consumer contract exchanges.”</li> </ul>
<p><b>Securities Industry and Financial Markets Association (SIFMA)</b> <i>Chris Killian</i></p>	<ul style="list-style-type: none"> <li>▪ Current risk retention regulations “adequately align such interest in securitizations of marketplace loans.”</li> <li>▪ Introducing risk retentions beyond securitization, such as sales and purchases of whole loans by institutional investors would not add sufficient value or be consistent with the goals of risk retention.</li> <li>▪ No reason to treat loans originated through MPLs differently from other asset classes in securitizations for purposes of risk retention.</li> <li>▪ An active secondary market would result in more MPL loans being originated and funded. More companies enter the MPL business bringing more competition and the continued drop in borrowing costs for consumers.</li> <li>▪ Regarding <i>Madden</i> – SIFMA filed an amicus brief in support of a rehearing which the Second Circuit denied. The case was wrongly decided as it overlooked the fundamental principle of usury law and the decision could interfere with banks’ exercise of their federal granted lending authority and undermine the secondary market for loans on which banks depend. That said, “we do not believe that this is ultimately a decision that will threaten the further development and success of marketplace platforms.”</li> </ul>

	<ul style="list-style-type: none"> <li>▪ “Originators and servicers in other asset classes have found that a larger securitization market enables them to better and more accurately price the risks of their loans and that the discipline of securitization reporting helps them to run a better business.”</li> </ul>
<p><b>Small Business Majority</b> <i>John Arensmeyer</i></p>	<ul style="list-style-type: none"> <li>▪ SBM is a national small business advocacy organization</li> <li>▪ 68% of small businesses seek loans of less than \$250,000. In fact, 50% of small businesses seek loans of \$100,000 or less.</li> <li>▪ While online lending opportunities are a welcome development, P2P lenders, merchant cash advance companies and others “operate in an almost entirely unregulated market.” Small businesses are susceptible.</li> <li>▪ Promote responsible lending practices like those in the Small Business Borrowers’ Bill of Rights.</li> <li>▪ Identify federal regulators “that can promulgate small business lending regulations under existing law,” in addition to looking for “more expanded legislative solutions.”</li> <li>▪ Need to set standards for alternative business lending drawing from the Small Business Borrowers’ Bill of Rights. <ul style="list-style-type: none"> <li>○ Empower the CFPB to policy small business lending abuses; create clear guidelines for disclosure; ensure that lenders size financing options to fit borrower needs; require brokers to be governed by fiduciary duty to borrowers; and require discrimination-free lending.</li> </ul> </li> <li>▪ Fair and clear regulation on crowdfunding “and other non-bank, non-VC sources of capital” while providing consumer/small business safeguards.</li> </ul>
<p><b>SoFi</b> <i>Robert Lavet</i></p>	<ul style="list-style-type: none"> <li>▪ The stipulation that marketplace lenders are not subject to consumer lending laws and operating without regulation “is not correct”. SoFi is covered under Title X of Dodd-Frank, subject to examination by the CFPB, compliant with Subpart F and Regulation Z, other consumer protection laws including TILA, ECOA, FCRA, SCRA, EFTA, and subject to state licensing and usury laws that do not apply to depository institutions.</li> <li>▪ Regarding <i>Madden</i>, SoFi does not partner with depository institutions and thus are not impacted. That said, marketplace lenders “that rely on FDIC insured depository institutions to originate loans have recently experienced reduced availability and increased cost of secondary liquidity.”</li> <li>▪ SoFi is a direct lender originating loans in states they’re compliant in which results in substantial compliance costs compared to depository institutions with federal preemption.</li> <li>▪ Agreement with the Milken Institute comment letter. Treasury should look into the feasibility of a uniform licensing regime for non-bank online lenders with clear regulations that protect consumers, while providing clarity to MPL platforms.</li> <li>▪ Current state licensing regimes are “unnecessarily complex,” creating undue barriers to entry, and is outdated to the economic realities of marketplace lending.</li> <li>▪ Risk retention: No need to institute any NEW risk retention rules since SoFi already covered under Dodd-Frank guidelines. It’s possible that those rules, when they go into effect in Oct. 2016, will hinder innovation and non-banks.</li> <li>▪ If new risk retention rules are proposed, Treasury needs to be careful to avoid multiple levels of risk retention on assets.</li> </ul>
<p><b>Structured Finance Industry Group</b> <i>Richard Johns</i></p>	<ul style="list-style-type: none"> <li>▪ Attempts to create new regulations targeted solely at MPL will stifle innovation and growth. For various asset classes involved in MPL and there are comprehensive sets of regulation and industry standards already in place.</li> <li>▪ They include: Truth in Lending, Regulation Z, Section 5 of the Federal Trade Commission Act, similar prohibitions under Consumer Financial Protection Act, Credit Practices Rule of the Federal Trade Commission, Equal Credit Opportunity Act, state laws, Gramm-Leach-Bliley Act and analogous state privacy laws. CFPB has broad powers related to consumer financial protection.</li> <li>▪ Interests of MPL and aggregator (institutional investor) can be aligned through the use of same contractual protections as those used in other loan purchasing agreements.</li> <li>▪ “Perhaps most importantly, all securitizations will be subject to risk retention requirements. In terms of marketplace lending, risk retention will apply – across all asset classes – at any point that funding is provided via securitization, whether directly by the originator or via an Aggregator.”</li> </ul>

	<ul style="list-style-type: none"> <li>▪ “Accordingly, the Final Rules explicitly define the “originator” role as separate and different from the “sponsor (or securitizer)” role. This recognizes that limiting the sponsor of ABS to only the original creditor under a loan or receivable, and not a subsequent purchaser or transferee, would severely impact the redeployment of capital that enables financial institutions to originate more credit than their limited capital resources would otherwise allow, thereby limiting the availability of credit to consumers and small businesses.”</li> <li>▪ SFIG’s membership believes that no additional regulation is necessary for marketplace lending, given robust legal and regulatory frameworks for the protection of consumers and businesses and securities laws governing ABS and other securities.</li> </ul>
<p><b>The Support Center</b> <b>Lenwood Long, Sr.</b></p>	<ul style="list-style-type: none"> <li>▪ A CDFI in North Carolina</li> <li>▪ Treasury should consider caps on pricing (online lenders exorbitant fees), greater transparency (pricing, servicing, etc.), fair decision-making process (borrower time to review), fair collections process (third-party collectors should be regulated and provide accurate and timely info to borrowers regarding debt and status), and standards (clear standards across platforms).</li> <li>▪ Risks with electronic data sources could lead borrowers on cycle of debt. Increased transparency needed.</li> <li>▪ While marketplace lending may be expanding access, it might not be expanding access to stability (cycle of debt, for instance, which is destabilizing).</li> </ul>
<p><b>Upstart Network Inc.</b> <b>Alison Nicoll</b></p> <p>Note: Upstart also signed onto Cross River Bank letter (Giles Gade)</p>	<ul style="list-style-type: none"> <li>▪ UNI operates the Upstart Platform.</li> <li>▪ “Loan products offered through marketplace lenders are neither novel nor new.”</li> <li>▪ “Extensive regulation already exists that adequately protects borrowers and investors from risk.”</li> <li>▪ Risk retention: alignment of interests already exist between borrowers and investors. As such, appropriate alternatives to risk retention should be explored.</li> <li>▪ Existing regulations should be updated to reflect new technologies and alternative credit analyses. Real-time access to certain government data with consumer consent would be welcomed.</li> </ul>
<p><b>WebBank</b> <b>John McNamara</b></p>	<ul style="list-style-type: none"> <li>▪ From a regulatory perspective, the origination of loans through MPLs “does not break new ground.”</li> <li>▪ Similar lending structures and terms as other lending programs, and subject to the same legal requirements and borrower protections.</li> <li>▪ On-site visits to each MPL are “frequent” and the Bank requires each MPL to undergo a third-party compliance management system review, the parameters of which are determined by the Bank.</li> <li>▪ The current regulatory construct is effective in managing risks.</li> </ul>
<p><b>Woodstock Institute</b> <b>Spencer Cowan</b></p> <p><b>ALSO:</b></p> <p><b>Paulina Gonzalez,</b> <b>Executive Director,</b> <b>California</b> <b>Reinvestment</b> <b>Coalition</b></p> <p><b>Peter Skillern,</b> <b>Executive Director,</b> <b>Reinvestment</b> <b>Partners</b></p> <p><b>Josh Zimer</b> <b>Co-Director, New</b> <b>Economy Project</b></p>	<ul style="list-style-type: none"> <li>▪ Small Business Borrowers’ Bill of Rights sets minimum standards and is a “good starting point” for a regulatory framework. Ability to repay is a concern.</li> <li>▪ Risk retention is “necessary” to ensure a lender’s interest is aligned with a borrower’s interest.</li> <li>▪ Concern with merchant cash advance lenders as they have direct access to borrower bank accounts (automatic withdrawals).</li> <li>▪ Lenders should not have direct access to a small business or consumer bank account. EFTA should be strengthened to prohibit direct access and ensure ACH authority can be revoked.</li> <li>▪ “Policymakers and regulators should ensure that online lenders are not able to evade the consumer and business borrower protections in state law by affiliating with a bank in a more loosely regulated state and claiming the benefits of federal preemption.”</li> <li>▪ The purpose of the loan is important in determining the appropriate measure for a borrower’s ability to repay. Difficult to judge, however, if the purpose of a loan isn’t entirely clear.</li> <li>▪ “To the extent that the regulatory framework is to support the safe growth of the online lending industry, the lessons from consumer small dollar loans and the explosive growth of the subprime and predatory mortgage lending industry should inform policymakers and regulators.”</li> <li>▪ “Presumption should be that the appropriate standard is based on the business’ current income absent clear and convincing evidence, as required by strict underwriting standards, that the loan will allow the business to expand and increase income enough to repay the loan.”</li> <li>▪ Current federal preemption “seems to favor the lowest common regulatory denominator, the state with the lowest level of consumer protection.”</li> <li>▪ Risk retention – two options: 1) “accredited investor” concept “might be applied “to limit sales of loans in which the lender did not retain risk to investors who meet similar criteria to ensure that they are</li> </ul>

	<p>financially sophisticated and can bear the loss in the event that the borrower defaults;" 2) define underwriting standards for online MPLs as equivalent to qualified residential mortgage standards.</p> <ul style="list-style-type: none"> <li>▪ An asymmetry of information from online MPLs can easily steer applicants into high cost loans. A similar fiduciary standard like what the U.S. Department of Labor is contemplating for retirement advice should apply to at least some online MPL loans. "A clear definition of the limits of the fiduciary duty will have to consider the size of the business and the loan."</li> <li>▪ Regulators need to monitor marketing/affiliate incentives that online lenders offer to ensure customers aren't being steered into high cost loans vs. alternatives. A fiduciary standard could also apply here.</li> <li>▪ Need to understand the variables and other factors involved in online MPL underwriting.</li> </ul>
<b>Edward Yale, CFA</b>	<ul style="list-style-type: none"> <li>▪ Need for "hard inquiries" to prevent borrowing abuses.</li> <li>▪ "Theoretically a consumer today can apply for multiple loans simultaneously on the internet and the consumer will get offers that do not reflect any of the potential trade lines that might be originated elsewhere."</li> </ul>
<b>ZestFinance Douglas Merrill</b>	<ul style="list-style-type: none"> <li>▪ Focus of the comment letter on the potential of big data to expand credit access and how the regulatory framework should evolve.</li> <li>▪ Creditors largely ignored new math with underwriting (thousands of data points).</li> <li>▪ Use of "little data" (current practice) locks many out of the US credit system and stifles innovation.</li> <li>▪ Regulatory actions, including Operation Choke Point, changed the ACH landscape "markedly" and impacted alternative lenders (increased costs, large deposit requirements to cover risk, and the difficulty for small companies to innovate in FinTech).</li> <li>▪ "Financial innovation is not over-regulated. The problem, rather, is inefficient regulation."</li> <li>▪ Need for national regulation which would reduce costs and expand access to capital.</li> </ul>